

HOW CAN THE UNITED STATES ARMY AND THE INTERAGENCY
COMMUNITY BETTER DEFINE AND DEVELOP RULE OF LAW
DOCTRINE AND INITIATIVES TO INCLUDE PROJECTS
WHICH WILL IMPACT THE HUMAN RIGHTS OF
WOMEN IN AFGHANISTAN AND IRAQ?

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ABSTRACT

HOW CAN THE UNITED STATES ARMY AND THE INTERAGENCY COMMUNITY BETTER DEFINE AND DEVELOP RULE OF LAW DOCTRINE AND INITIATIVES TO INCLUDE PROJECTS WHICH WILL IMPACT THE HUMAN RIGHTS OF WOMEN IN AFGHANISTAN AND IRAQ?, by MAJ Mary Elizabeth Card, 105pages.

Rule of law is in force when an individual is secure in their own person and property, the state is bound to law, and human rights and fundamental freedoms are protected by the state. Rule of law doctrine for the United States Army is in its infancy and as it develops it needs a strong framework. Professor John Kotter's model for change is a method that can assist in developing a rule of law framework.

Simultaneously as rule of law doctrine is expounded upon in further editions of *Stability Operations* doctrine, women's rights also need to be addressed. There is an urgent need for women's rights to be accepted as fundamental human rights. Rule of law programs can be developed with an emphasis on women. These programs are not controversial and should not be treated as such. Instead these programs should be viewed as fully supporting the constitutions and treaty obligations of nations such as Afghanistan and Iraq.

As rule of law programs are created that address the needs of women, and specifically in Afghanistan and Iraq, all women need to be included in program development. Islamic feminists, conservative fundamentalists, urbanites, women who live in rural areas as well as the educated, and uneducated need to be a part of the discussion. It is imperative that the Army create a guiding coalition to take the lead on rule of law programs in general and on programs that impact the human rights of women in particular.

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Warhorse!

The concept for this paper began while I was serving as the Brigade Judge Advocate for 2nd Brigade, 4th Infantry Division, motto Warhorse, from June of 2005 until June of 2007. While deployed with 2nd Brigade in Iraq, I met Mr. Bruce Rhoades, an attorney with the United States Department of Justice. Mr. Rhoades was working in Al-Hillah, Iraq, as the Rule of Law Coordinator and was assisted by Mr. Kamil Hassani, a bi-lingual and bi-cultural attorney advisor. Mr. Rhoades and Mr. Hassani's dynamic commitment, dedication, and enthusiasm inspired myself and my legal team to get involved in rule of law projects to benefit the local Iraqi communities and judges. We approached our Brigade Combat Team Commander, Colonel John Tully, with a basic plan and concept which he immediately and fully supported, encouraged, and then directed. With the outstanding assistance of battalion commanders to include Lieutenant Colonel (now Colonel) Richard Muraski, as well as truly dedicated and inspiring representatives from Civil Affairs to include Major James Ortolini and the late Captain Jupiter Freeman, our rule of law team produced many direct and indirect results to include the rebuilding of a courthouse in Iskandariyah, Iraq. I am also especially thankful to Lieutenant Colonel James Howard who provided the opportunity to work on a rule of law project for women in one of the local Iraqi girls' schools. This opportunity demonstrated that rule of law projects for women can succeed without controversy and with great success.

My legal team consisted of Captain Carlos Calderon, CPT John Martin, Sergeant First Class Horace Estes, Staff Sergeant Martin Diaz De Leon, Sergeant Marco

Maldonado, Sergeant Rufus McNeill, Specialist Chrystal Saint Peters, Private First Class (now Second Lieutenant) Thomas Mahoney, and Private First Class Arthur Valdez. This team risked their lives on convoys to conduct judicial assessments, put in even additional hours in a deployed environment, worked tirelessly at a level well above their ranks and pay grade and ensured our rule of law mission succeeded. For these efforts and much more, I will always be thankful and inspired.

Rule of law projects demand continuity of effort and I am also especially thankful to the Brigade Judge Advocate that replaced my unit, Major (now Lieutenant Colonel) Richard DiMeglio. Without his involvement and tireless dedication, the courthouse would not have reached completion and rule of law projects would not have continued. I dedicate this paper to a member of MAJ DiMeglio's team, paralegal Corporal Corey Phelps, who was killed in the line of duty in Iraq.

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CHAPTER 1

INTRODUCTION

Perhaps the greatest achievement in history is the subordination of power to law. That is, creating structures that limit and control the arbitrary power of government, preventing one person or entity--a king, a priest, a communist party boss--from taking another person's life or property on a whim. Citizens can go about their business generally confident that they won't be dragged off the streets to disappear forever, and confident that their hard-earned property won't be confiscated without warning. We may take the rule of law for granted in America, but immigrants from other parts of the world know how rare it is.¹

General

The courthouse looked as if it would topple over with a strong gust of wind. Men, women, and children sat outside on plastic lawn chairs or stood in clusters under the trees to avoid the summer sun because the building had reached maximum capacity. As you approached the courthouse you could see holes in the walls as reminders of the battles waged, some so large they had to be filled in with sandbags. Inside the dismal courthouse there were no light fixtures other than single light bulbs dangling precariously from the ceiling. The ceiling itself had a few gaping holes that caused some problems when it rained. There were no law books to speak of, no computers and some of the desks of the judges were mere tables with folding chairs. The restrooms had long ago stopped working and all of the employees and those visiting the courthouse had to walk to another building to find facilities. The courthouse was located in the town of Iskandariyah, Iraq. The year was 2005.

¹The author of this quote is unknown. It was posted on the office door of the Rule of Law Coordinator during 2005-2006 at the Babil Provincial Reconstruction Team Rule of Law office located at the Regional Embassy Office (REO) Al-Hillah, Iraq.

Fast forward two years through two brigade combat team commanders, two rule of law coordinators from the Department of Justice, and two U.S. Army brigade legal and brigade civil affairs teams to the year 2007. The same courthouse had undergone tremendous renovation. There were no holes in the walls any longer. There were places for people to wait and restrooms to use. The judges had new office equipment including computers and law books. While the courthouse building is not what is most important in terms of the administration of justice, the courthouse building does set a tone and establish legitimacy for the activities that occur inside its walls. Rule of law programs involve renovating courthouses such as the Iskandariyah courthouse as well as many other vital projects that this paper will explore.

Rule of Law Defined

The rule of law is critical to U.S. Army stability operations. In the recently released FM 3-07, *Stability Operations*, rule of law is highlighted in multiple chapters. Beginning in 1-40, rule of law is defined as “a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated and are consistent with *international human rights principles* (emphasis added).”² Additionally, the FM states the rule of law “requires measures to ensure adherence to the principles of supremacy of law, *equality before the law* (emphasis added), accountability

²United States Department of the Army, Field Manual 3-07, *Stability Operations* (Washington, DC: Government Printing Office, October 2008).

to the law, fairness in applying the law, separation of powers, participation in decision-making, and legal certainty.”³

Another way to define the rule of law is to ask what the purpose of law is.⁴ While there can be disagreement among societies as to why law exists, there is some widespread acceptance that the rule of law has essentially three purposes:

First the Rule of Law should protect against anarchy and the Hobbesian war of all against all. Second, the Rule of Law should allow people to plan their affairs with reasonable confidence that they can know in advance the legal consequences of various actions. Third, the Rule of Law should guarantee against at least some types of official arbitrariness.⁵

Essentially, the purpose of law can be described as providing a government of security, predictability, and reason.⁶

The Rule of Law Handbook for Judge Advocates offers another definition specific to deployed judge advocates working in the field of rule of law operations. Rule of law is described as:

A principle of governance in which all persons, institutions and entities, public and private including the state itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁷

In essence this definition also yields very powerful effects to include individuals being secure in their own persons and property, the state itself as being bound to law, the

³Ibid.

⁴Katherine Gorove and Thomas B. Nachbar, *Rule of law Handbook: A Practitioner's Guide for Judge Advocates* (Charlottesville, VA: GPO, 2008).

⁵Ibid., 4.

⁶Ibid.

⁷Ibid., 6.

law as a readily determined and stable entity to allow for individuals to plan their affairs, and most importantly human rights and fundamental freedoms protected by the state.⁸

Overall, according to this definition, it can be extrapolated that individuals would rely on the existence of legal institutions and the content of law in the conduct of their daily lives.⁹

Another approach to the rule of law can be analyzed as the concept of five different goals. These goals include, “making the state abide by the law, ensuring equality before the law, supplying law and order, providing efficient and impartial justice, and upholding human rights.”¹⁰ There are countless individuals and agencies that have offered their own definitions of the rule of law which correspond to their own institutional goals and ideals. Therefore it can be stated that any meaningful definition of the rule of law represents an ideal and that success of a rule of law project is actually a “matter of the host nation’s movement toward the rule of law, not the full satisfaction of anyone’s definition of it.”¹¹

Therefore, it can also be stated that the rule of law is typically defined as being consistent with human rights principles and requires equality before the law. However, there is a problem. Legal issues for women in predominantly Islamic countries are

⁸Ibid.

⁹Ibid.

¹⁰Ibid., 5.

¹¹Ibid., 6

addressed under the Quran,¹² the book that Muslims believe to be the book of divine guidance and direction for mankind, as well as steeped in a long cultural history; very different from our own western traditions. Rule of law programs for women are perhaps the most needed yet also the most controversial. There is perhaps an unwritten requirement that the delicate balance of preserving women's rights yet respecting cultural and religious law is observed.

Research Question

The researcher of this thesis will address the fundamental question of how the U.S. Army and the interagency community can better define and develop rule of law doctrine and initiatives to include projects which will impact the human rights of women in Afghanistan and Iraq. Rule of law initiatives' include everything from renovating and rebuilding courthouses, like the courthouse in Iskandariyah, to empowering the judicial system to address the existence of secret sharia law courts that can violate women's fundamental human rights to their core as well as usurp the judicial system.

Key Agencies in Rule of Law Programs

It can be argued there is not a lead agency for rule of law projects. As a matter of United States Policy, the Department of State is the lead agency in conducting most stability and reconstruction activities unless otherwise specified. However in direct contrast to this policy, the authors of Joint Publication 3-0, *Joint Operations*, stated that while other agencies may have the lead, U.S. military forces must be prepared to carry

¹²The spelling of the Holy Book is often spelled as either "Koran" in English translation, as "Quran" in more modern Arabic spellings or as "Qu'ran" which is an ancient spelling. The author has selected the more modern Arabic spelling for this paper.

out all aspects of stability operations and references the concept of interagency coordination.¹³ Joint Publication 3-08 defined interagency coordination as the “interaction that occurs between agencies of the U.S. Government, including the Department of Defense, for the purpose of accomplishing an objective.”¹⁴

There are two key directives that define the federal governments’ organization for stability operations. They are the National Security Presidential Directive 44 (NSPD-44) and the Department of Defense Directive 3000.05 (DOD Directive 3000.05).¹⁵ Also relevant is the interagency coordination set forth in the National Security Presidential Directive 1 (NSDP-1) which is the coordinating framework used for operations in Afghanistan and Iraq due to the fact these operations were planned and commenced before NSPD-44 was promulgated.¹⁶

The NSDP-1 guides operations in Afghanistan and Iraq today. For Afghanistan, the interagency work has occurred within a modified NSPD-1 framework, with day-to-day policy development coordinated by the Afghanistan Interagency Operations Group (AIOG).¹⁷ In Iraq, policy development and coordination occurs through the Iraq Policy

¹³Joint Chiefs of Staff, Joint Publication 3-0, *Joint Operations* (Washington, DC: Government Printing Office, September 2006).

¹⁴Joint Chiefs of Staff, Joint Publication (JP) 3-08, *Interagency, Intergovernmental Organization and NonGovernmental Organization Coordination During Joint Operations* (Washington, DC: Government Printing Office, March 2006).

¹⁵Gorove and Nachbar, 25.

¹⁶*Ibid.*

¹⁷*Ibid.*, 26.

Operations Group (IPOG).¹⁸ Both the AIOG and the IPOG make policy recommendations to the National Security Council Deputies Committee, which for these two areas is chaired by the Assistant to the President and Deputy National Security Advisor for Afghanistan and Iraq.¹⁹

The U.S. Government has promulgated guidance regarding post conflict operations and in addition to Congress there are an extensive number of offices and individuals that may influence post-conflict and stability policy.²⁰ They include, but are not limited to the National Security Council System, the Department of Commerce, the Department of Justice, the Department of State, the Department of the Treasury, the Executive Office of the President, Office of Management and Budget, the Department of Agriculture, and the U.S. Agency for International Development.²¹ The Department of Defense (DOD) also “engages in the full spectrum of operations, both by how it engages in offensive and defensive operations and when it engages in stability operations.”²²

Specific actors in the DOD that are directly involved in rule of law operations are judge advocates, civil affairs units, and military police. Additionally, the Defense Institute of International Legal Studies (DILLS) and all operational forces are involved in rule of law operations. The mission of DILLS is to provide “expertise in over 300 legal

¹⁸Ibid.

¹⁹Ibid.

²⁰Ibid., 32.

²¹Ibid.

²²Ibid., 48.

topics of Military Law, Justice Systems and the Rule of Law, with an emphasis on the execution of disciplined military operations through both resident courses and mobile education teams.”²³ Regarding all operational forces, the rule of law is not merely a specialized line of operation, but is instead a vital role for every servicemember and unit.²⁴

There are a multitude of other organizations and agencies that are directly or indirectly involved in rule of law operations or could possibly be included in rule of law operations. These organizations include, but are not limited to, the US Embassy Country Team, the USAID Democracy and Governance Officer, the U.S. Institute for Peace, the United Nations, the International Monetary Fund, the World Bank, Non-Governmental Organizations (NGOs), and coalition partners.

While there are many organizations, and in particular NGOs, that are involved in rule of law operations, it is vital to ask if there are other agencies which can and should also be involved in this process. Additional questions include: are there any current rule of law initiatives that address issues that specifically affect women? How can these programs already in place and other programs target issues relating to women yet account for differences in culture and Islamic law? Whose rule of law is the U.S. Army working to impose and strengthen; the western rule of law or the Islamic ideal of rule of law?

²³Ibid. DILLS is a part of the Defense Security Cooperation Agency, works with US Embassy Country Teams and host nations to provide timely, effective, and practical seminars to lawyers and non-lawyers with the goal of teaching operations including post-conflict reconstruction, within the parameters of international law.

²⁴Ibid., 52.

Returning to the definition, rule of law requires consistency with human rights principles as well as promoting equality under the law. The rule of law mission spans multiple agencies and organizations as well as coalition partnerships.

Model for Change in Rule of Law Programs

With the recent release of FM 3-07, it is a very exciting time for rule of law operations. Fresh doctrine is now available for the key players. However, the doctrine needs to be further shaped and defined and especially needs to include a discussion of handling the delicate balance of issues impacting women in Islamic cultures and the responsibilities of the U.S. Army and inter-agency efforts. As the rule of law expands and changes, a model for change is also needed. This paper recommends Professor John Kotter's eight stage process for change as a methodology for making permanent change.²⁵

Professor Kotter is recognized as an expert in organizational change. He has proposed the following multi-stage process to lead change: (1) Establishing a sense of urgency, (2) Creating the guiding coalition, (3) Developing a vision and strategy, (4) Communicating the change, (5) Empowering broad-based action, (6) Generating short term wins, (7) Consolidating gains and producing more change, and (8) Anchoring new approaches in the culture.²⁶ These stages will be analyzed at length in the following chapters.

²⁵John Kotter, *Leading Change* (Boston: Harvard Business School Press, 1996), 12.

²⁶*Ibid.*

The methodology of this thesis explores in depth the new rule of law doctrine contained in FM 3-07 with an emphasis on what the doctrine explicitly or implicitly states regarding rule of law programs for women. Next, the key players in rule of law programs are highlighted and new members of the team are proposed to include the American Bar Association Rule of Law Initiative and the Arab Women's Legal Association. After a discussion of doctrine and key players, the United Nations Convention to End Discrimination of Women (CEDAW) as well as the Constitutions of Afghanistan and Iraq will be analyzed. There is nothing more significant than the treaty obligations a country has committed to or the Constitutions from which all laws flow. Against this backdrop of conventions and constitutions, varied model rule of law programs are discussed and analyzed. Model rule of law programs include everything from courthouse renovation to eradicating secret sharia courts. This thesis concludes with a recommendation for ways to incorporate equality under the law and a recommendation supporting fundamental human rights of women in rule of law programs.

Summary

There are many ways to define rule of law but in essence it is individuals being secure in their own persons and property, the state itself as being bound to law, the law as a readily determined and stable entity to allow for individuals to plan their affairs and most importantly, human rights and fundamental freedoms are protected by the state. There are many agencies working together to establish the legitimate rule of law. Without a lead agency, the military is relied upon especially in Afghanistan and Iraq to provide rule of law operations. One way for the military to effectively engage in rule of

law operations is to utilize Professor Kotter's model for change. Additionally, by studying the CEDAW and the Constitutions of Afghanistan and Iraq, a rich understanding is created of the priorities of the nations involved.

The rule of law doctrine is in its infancy and as it grows it needs to change and evolve. Professor Kotter's model for change is a way to keep the rule of law doctrine moving forward and towards an acceptance of women's rights as fundamental human rights as well as equality for all. The following chapters discuss the literature review, research methodology, analysis, and recommendations.

CHAPTER 2

LITERATURE REVIEW

Introduction

The rule of law process and its impact on women requires a study of resources in a very particular order. The rule of law must first be defined under current Army doctrine and terms. Once there is a common and accepted definition of “rule of law,” specific application of rule of law programs in Afghanistan and Iraq are reviewed. In order to include the fundamental human rights of women into the rule of law equation it is vital to next discuss women and the rule of law in a model that incorporates change. Finally as the model is explored, one of the most difficult and delicate issues concerning women is the balancing of Sharia or Islamic law against our western notions of law, including a discussion of Islamic feminism and its role, to arrive at the fundamental question of whose rule of law should be imposed and how will that decision affect women in Iraq and Afghanistan. Against this backdrop, CEDAW and the Constitutions of Afghanistan and Iraq will be more easily evaluated and understood.

Rule of Law Definition

Beginning with the definition of rule of law, as described in, FM 3-07, *Stability Operations*,²⁷ published in October 2008, included for the first time definitions and doctrine describing rule of law. Specifically, the doctrine creators outlined that rule of law must be consistent with international human rights principles and that the law must

²⁷Department of the Army, Field Manual 3-07, *Stability Operations*, October 2008.

be enforced equally. Stability operations include rule of law as a primary stability task, and includes rule of law in the stability operations framework. FM 3-07 also includes a discussion of rule of law in security sector reform.

Additionally, FM 3-07 states that to establish effective rule of law programs, all efforts to support and establish the rule of law must take into account the customs, culture, and ethnicity of the local populace.²⁸ The following objectives are listed as supporting the rule of law: establishment of a just legal framework, law and order enforced accountability to the law, access to justice ensured, citizen participation promoted, culture of lawfulness promoted, and public security established.²⁹ Most importantly, FM 3-07 emphasizes the need to focus on vulnerable populations. In many countries in the world, and especially in Afghanistan and Iraq, women are incredibly vulnerable populations.

The 2008 Rule of Law Handbook: A Practitioner's Guide for Judge Advocates is particularly useful as it includes a discussion on the implications of gender for rule of law programs.³⁰ Specifically, the handbook highlights that in 2000, the United Nations Security Council Resolution 1325 put women on the international agenda for peacemaking, peacekeeping, and peacebuilding while calling for gender balance and gender mainstreaming.³¹ Gender balance is essentially the inclusion of both women and men at all stages and all roles within processes such as negotiations and mediations in the

²⁸Ibid.

²⁹Ibid.

³⁰Gorove and Nachbar.

³¹Ibid.

peacekeeping process. Gender mainstreaming however is vital in the rule of law process in that it is:

The process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension in the design, implementation, monitoring, and evaluation of policies and programs in all political, economic, and social spheres so that women and men benefit equally and inequality is not perpetuated.³²

Additionally, there are two views of the rule of law, a formalist view and a substantive view. A formalist view emphasizes the procedures for making and enforcing law and the structure of the nation's legal system.³³ Conversely a substantive view focuses on the protection of certain rights.³⁴ Therefore, the transparency and stability of the law is more closely a formalist concern, while the protection of human rights and fundamental freedoms is a substantive one.³⁵ The two views are not mutually exclusive and one can be committed to both a formalist and a substantive approach for the rule of law. The distinction then is merely a matter of emphasis and priority rather than a choice between one approach and the other.³⁶

Another aspect of the formalist and substantive views of the rule of law is in terms of rule of law projects themselves. Rule of law projects with formalist goals are, "less likely to result in controversy and confusion among both international and host-

³²Christine Chinkin and Florence Butegwa, *Gender Mainstreaming in Legal and Constitutional Affairs* (2001), 12.

³³*Ibid.*

³⁴*Ibid.*

³⁵*Ibid.*

³⁶*Ibid.*

nation participants than projects with substantive goals simply because there is less disagreement over the formal criteria of the rule of law than there is regarding the substantive criteria.”³⁷ Additionally, formalist projects are less likely to upset established political power relationships as well as less likely to threaten the cultural identity of the host nation and its population as substantive projects.³⁸ However it is also “unlikely in today’s environment that purely formalist projects are likely to receive the kind of broad international support they require if they completely ignore substantive rights and U.S. law may place explicit limits on assistance to host nations guilty of human rights abuses.”³⁹ Therefore it is vital to always consider that a purely formalistic project might have substantive ramifications.

One final aspect on the definition of rule of law especially in the context of stability operations and working in a counterinsurgency (COIN) environment is to focus on legitimacy. “Legitimacy is the watchword of COIN which means that every operation undertaken during a counterinsurgency-offensive, defensive, or stability-has a rule of law component.”⁴⁰ Any act that the populace considers to be illegitimate is likely to discourage the populace from viewing legal rules as binding. Therefore, a “command’s ability to establish the rule of law within its area of control is dependent in large part on

³⁷Ibid.

³⁸Ibid.

³⁹Ibid.

⁴⁰Ibid., 18.

its own compliance with legal rules restricting Soldiers and the command's own discretion and protecting the population from the seemingly arbitrary use of force."⁴¹

Contemporary Rule of Law Application

After establishing the basic definition and its corresponding attributes for rule of law, it is important to review contemporary views on the application of rule of law in Middle Eastern countries and in particular in Afghanistan and Iraq, and how women in those countries are currently impacted. Jane Stromseth, David Wippman, and Rosa Brooks outlined specific rule of law challenges in their book, *Can Might Make Rights? Building the Rule of Law after Military Intervention*.⁴² Ms. Stromseth and Ms. Brooks are professors of law at Georgetown University and Mr. Wippman is a professor of law at Cornell University. The authors offer a synergetic approach from instability of a nation to the transition of post-conflict reconstruction. The authors do not focus on one particular region such as the Middle East but instead the authors focus on the challenges of justice system reform, creating rule of law cultures, and enhancing rule of law efforts through planning, funding, and local ownership.

While Stromseth, Wippman, and Brooks focused in more general terms on the issues surrounding the U.S. military and specifically the U.S. Army involvement in nation-building and rule of law establishment or enforcement, Thomas Carothers focused specifically on the Middle East. Carothers, the founder and director of the Democracy

⁴¹Ibid.

⁴²Jane Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions* (New York, NY: Cambridge University Press, 2006).

and Rule of Law Project at Carnegie Endowment edited, *Promoting the Rule of Law Abroad: In Search of Knowledge*.⁴³ Carothers included introductory information on the concept of the rule of law but then he specifically addressed regional experiences in the Middle East. In a subsection of the book, David Mednicoff, explored in detail the dilemmas associated with implementation of rule of law programs in the Middle East.

Mednicoff analyzed the rule of law in Arab and American settings by looking at points in common and points in contention. Regarding points in common, Mednicoff stated:

First, Islam had dominated the development and practice of law in the Arab world from the seventh century until the present. It remains at the ethical and actual center of discussion of law in contemporary Arab states. In particular, many Arab constitutions clearly endorse traditional Islamic law as the primary source for legislation. Second, the dominant current trope of political discourse and opposition in Arab countries at present is also Islam. Thus, the notion that Islamic law may resemble law in the United States in significant respects has implications for contemporary rule of law work. Third given the above points Islamic ideals play the same broad, basic foundational role in Arab legal orders that the combination of Judeo-Christian values and original constitutional principles do in the U.S.⁴⁴

Mednicoff argued that due to the influence of Islamic legal ideals and development, the rule of law exists in Arab societies in a manner similar to its status in the U.S..

However, Mednicoff noted key differences in the rule of law systems in the Arab world compared to the U.S..

⁴³Thomas Carothers, *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington DC: Carnegie Endowment for International Peace, 2006).

⁴⁴*Ibid.*

The Arab legal system is a mixture of Islamic, Ottoman, European, and post independence laws.⁴⁵ Yet even in these places, Western legal ideas and practices have also become engrained. The mixture of legal sources does not exactly create legal clarity or checks on authority. Additionally, Mednicoff raised the point that the extent to which Islam in general and Sharia in particular should inform the rule of law is a complicated area of great debate among Arab scholars. It is therefore a daunting task for U. S. based rule of law experts to understand, navigate, and become sensitive to the ways that religion and politics are intertwined in most Arab societies. Mednicoff posited that Islamic legal tradition is currently bound in contemporary Arab reform. In this contemporary Arab reform, there are four trends that can be indentified. The four trends include orthodox, conservative, reconstructionist, and reform.⁴⁶

Contemporary Arab Reform

Orthodox Reform

Mednicoff defines orthodoxy as essentially what is commonly stated as “Islamic Fundamentalism.”⁴⁷ Those reformers within this category construe Islam in rigid terms and embrace the social norms and practices of Islamic history including the subordination of women.⁴⁸ “Such a tendency can continue the historical practice of authoritarian control, so long as a ruling government is enforcing a well defined tradition of Islamic

⁴⁵Ibid.

⁴⁶Ibid., 260.

⁴⁷Ibid.

⁴⁸Ibid.

law.”⁴⁹ Another way to describe Islamic Fundamentalism, particularly in the context of the view of women, is that the “values they enshrine are of themselves responsible for types of behavior underpinning male supremacism.”⁵⁰

Conservative Reform

Mendicoff next defines conservative Arab reform as “in its most obvious and literal sense that of resisting change.”⁵¹ Additionally, the conservative view or tendency “simply refers to a lack of strong interest in reforming the patchwork of Islamic, colonial, and other laws out of comfort with or belief in the importance of maintaining the status quo.”⁵² The author also suggested that legal professionals in Arab societies view the problem with their legal systems as citizens’ lack of respect for law, as opposed to issues about the accountability or effectiveness of law itself.⁵³

In *Islam: A Very Short Introduction*, Malise Ruthven establishes that “there can be no doubt that the public and symbolic role of women lies at the heart of the Islamist discourse.”⁵⁴ Ruthven specifically addresses conservatives who argue that the Prophet of Islam greatly improved the position of the Arabian women of his time, guaranteeing them

⁴⁹Ibid.

⁵⁰Malise Ruthven, *Islam-A Very Short Introduction* (Oxford, England: Oxford University Press, 2000).

⁵¹Ibid., 260.

⁵²Ibid.

⁵³Ibid.

⁵⁴Ibid.

basic rights in marriage, guaranteed rights of inheritance under the protective umbrella of the family, and did not imply any spiritual inequality.⁵⁵

Reconstructionist Reform

While this view can often be confused with a fundamentalist or orthodox view, Islamic jurisprudence has been characterized as reinterpreting specific and important principles in a manner that addresses the needs of a particular situation.⁵⁶ Mendicott explains that the essence of a reconstructionist paradigm is reconstructionists hold a “belief that Islamic ideas with historical resonance can be rethought to be compatible with analogues in Western and other democratic theory.”⁵⁷

Ruthven explains this view by stating that the “Quran was revealed at a specific time and in a specific social context.”⁵⁸ Therefore, the reconstructionist task is to reinterpret the spirit of the Quran’s provisions in the light of modern realities.⁵⁹ Ruthven further illustrates this view with the following example using the Quran: the verses allowing polygyny require that each wife be treated equally.⁶⁰ However, a reconstructionist would add an emotional and psychological dimension to the notion of

⁵⁵Ibid.

⁵⁶Ibid.

⁵⁷Ibid.

⁵⁸Ibid., 95.

⁵⁹Ibid.

⁶⁰Ibid.

equality and would most likely argue that since no man can be expected to be equally emotionally involved with all of his wives, polygyny is effectively ruled out.⁶¹

Arab Reform

Mendicott explains that this fourth and final view cautions against having too much faith in “the prospects for traditional and Islamic political and legal theory to contain or embrace many core ideas in contemporary Western or other democratic theory.”⁶² In this view, there is a preference and willingness to articulate theories of legal and political reform directly into global usages such as in the context of democracy and human rights.⁶³ This view can be beneficial in advancing rule of law programs.

All four of the aforementioned views detail a connection between Islam and the rule of law. This connection is vital for those seeking to strengthen the rule of law in the Middle East and specifically in Afghanistan and Iraq. “As a general matter, Western advocates of Arab legal change often favor ideas that fall within the ‘reform’ category above while indigenous activists more typically fit within the ‘reconstructionist’ and orthodox trends.”⁶⁴ Even the United States government has often supported conservatives and “has even aided ‘orthodox’ Arab governments and non-state movements, most

⁶¹Ibid.

⁶²Ruthven.

⁶³Ibid.

⁶⁴Ibid., 261

obviously in the respective cases of Saudi Arabia and the Islamist militias who fought Soviet control of Afghanistan in the 1980s.”⁶⁵

Now that the rule of law has been defined and a contemporary application has been reviewed as well as an understanding of the four views of contemporary Arab reform, the concepts of a transformational change model is presented. Professor Kotter’s eight stage model is introduced and discussed in greater detail in the following chapters.

Kotter’s Transformational Change Model

Professor Kotter’s eight-stage change process model can be used when making a transformational change in the U.S. Army. This model can be used to assist women in external rule of law planning as well as internal planning for rule of law projects. Kotter is considered an expert on leadership and change and he explained his model in his book, *Leading Change*.⁶⁶ His eight-stage model includes the following steps: (1) Establishing a sense of urgency, (2) Creating the guiding coalition, (3) Developing a vision and strategy, (4) Communicating the change, (5) Empowering broad-based action, (6) Generating short term wins, (7) Consolidating gains and producing more change, and (8) Anchoring new approaches in the culture.⁶⁷

Kotter’s eight-stage model creates a discussion tool for balancing forms and application of Sharia law that are inconsistent with the concept of fundamental human rights. For example, the concept of honor killing is contrary to the concept of a

⁶⁵Ibid.

⁶⁶John Kotter, *Leading Change* (Harvard Business School Press, 1996).

⁶⁷Ibid.

fundamental human right of being safe in your person and guaranteed the right to a fair trial before the deprivation of life or liberty.⁶⁸ This position will be difficult to anchor in some segments of Islamic culture that cling to the practice of honor killing and believe it is divinely inspired. It is vital that when anchoring change in a culture that there is a lot of verbal instruction and support because without it, people are often reluctant to admit the validity of new practices.⁶⁹ Kotter's eighth stage of making permanent organizational change by anchoring new approaches in the culture focuses on examples such as the elimination of honor killing practices.

Kotter defined culture as the "norms of behavior and shared values among a group of people."⁷⁰ Additionally, Kotter defined norms of behavior as "common or pervasive ways of acting that are found in a group and that persist because group members tend to behave in ways that teach these practices to new members" and shared values as "important concerns and goals shared by most of the people in a group."⁷¹ In

⁶⁸Honor Killings have been described as events "whereby a Muslim male family member, typically the father, murders his daughter in order to defend the family's honor." "Additionally, while fathers are commonly responsible for honor killings, they often act in concert with their daughters' brothers, uncles, and even female relatives. For infringements upon a Muslim daughter's "honor" constitute the greatest humiliation possible to the religious and tribal tradition from which many such immigrant families emerged. Acts that demand "punishment" include refusing to wear a hijab (or headscarf), having non-Muslim boyfriends or male friends of any origin, being sexually active, rejecting arranged marriages, aggressively seeking employment and education, and, more than anything else, attempting to assimilate into Western culture." *San Francisco Chronicle* <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2008/01/23/cstillwell.DTL> (accessed January 23 2008).

⁶⁹Ibid., 157.

⁷⁰Ibid., 148.

⁷¹Ibid.

order to anchor change in a culture Kotter states that new approaches depend on results, require a lot of talk, and may involve turnover of key personnel in leadership roles. The eight stage change process will be further explored in the following chapters.

Applying these concepts of rule of law and specifically changing laws that are inconsistent with human rights, may have results that are of primary importance. Kotter stated that new approaches usually sink into a culture only after it is very clear that they work and are superior to the old methods.⁷² There is a lot to be gained when a country sheds its human rights abuses of the past and the benefits of this change need to be articulated. Additionally, eliminating human rights abuses requires a lot of discussion by those on all sides of the issue to examine past practices and paradigms. Finally, as Kotter pointed out, sometimes “the only way to change a culture is to change key people.”⁷³

In terms of change, there are some aspects of sharia law that are inconsistent with fundamental human rights principles and must be changed in order for the rule of law to truly be established. However some aspects of sharia law are consistent with human rights principles and therefore require a balancing test of which laws must be eradicated and which laws must be supported. For example, family law always makes up an important part of the Sharia law. Some features of family law in the classic Sharia that would guide the judge in making his decisions:

Usually, an individual became an adult at puberty.

A man could marry up to four wives at once.

A wife could refuse to accompany her husband on journeys.

⁷²Ibid.

⁷³Ibid., 157.

The support of an abandoned infant was a public responsibility.

A wife had the right to food, clothing, housing, and a marriage gift from her husband.

When the owner of a female slave acknowledged her child as his own, the child became free. The child's mother became free when the owner died.

In an inheritance, a brother took twice the amount as his sister. (The brother also had financial responsibility for his sister.)

A husband could dissolve a marriage by repudiating his wife three times.

A wife could return her dowry to her husband for a divorce. She could also get a decree from a *kadi* ending the marriage if her husband mistreated, deserted, or failed to support her.

After a divorce, the mother usually had the right of custody of her young children.”⁷⁴

Many of these examples of Sharia law are not inconsistent with human rights principles and therefore a delicate balance of laws in effect must be initiated. During the 19th century, many Muslim countries came under the control or influence of Western colonial powers and therefore Western-style laws, courts, and punishments began to appear within the Sharia.⁷⁵ Some countries totally abandoned the Sharia and adopted new legal codes based on European systems while many other Muslim countries put the government in charge of prosecuting and punishing criminal acts.⁷⁶ In the area of family law, some Muslim countries now prohibit polygamy and divorce by the husband's

⁷⁴Constitutional Rights Foundation, Origins of Islamic Law found at <http://www.crf-usa.org/america-responds-to-terrorism/the-origins-of-islamic-law.html> (accessed 23 March 2009).

⁷⁵Ibid.

⁷⁶Ibid.

repudiation of his wife.⁷⁷ Many Muslim legal scholars today believe that the Sharia can be adapted to modern conditions without abandoning the spirit of Islamic law or its religious foundations.⁷⁸ One of the main challenges of rule of law operations is to then assist with creatively adapting Sharia law to new and more modern circumstances.

Balancing Sharia Law

*Islam, A Very Short Introduction*⁷⁹ by Malise Ruthven presents a fascinating look at sharia law and the rights of women. Mr. Ruthven's work includes a definition of Sharia and its consequences, as well as information on women and the family. Ruthven accurately and succinctly described the relation of women and Islam as being fraught with controversy in that some people believe that the faith oppresses and even persecutes women, and other people believe that Islam contains a cultural authenticity and women have rights to assert themselves in ways that differ from female self-assertions current in non-Muslim societies.⁸⁰ Ruthven mentioned the issue is further complicated by the interaction of history, religion, culture and politics.⁸¹ The author specifically explained the relationships between women and the sharia, marriage and divorce, and sexuality.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Ruthven.

⁸⁰Ruthven.

⁸¹Ibid.

Women and Sharia

Ruthven established that while the Quran does not imply spiritual inequality there are particular verses which testify to the inferiority of women. For example, “a sister shares only half the portion of her brothers under the Quaranic law of inheritance with the assumption being that her husband will maintain her.”⁸² Additionally, a husband may physically chastise a recalcitrant or disobedient wife as a final resort when other measures have failed.⁸³ And, in certain legal proceedings a woman’s testimony is only worth half that of a man and women providing evidence on a business matter are allowed to consult with a friend as women are presumed to have limited knowledge of the topic.⁸⁴

Marriage and Divorce

Under Sharia law, the marriage contract or *nikah* is a legal contract sanctioned by the divine law and is not as in a Christian view a sacrament.⁸⁵ Ruthven cited that according to most legal authorities the woman’s *wali* or guardian enters into the marriage on her behalf and most agree that a virgin may be forced to marry a man of her father’s choice.⁸⁶ Only the Shia view maintains that women are a full legal entity coequal with their male counterpart. Additionally, a woman’s interest “is supposed to be secured by the *mahr* or dowry provided by her husband, a sum of money or its equivalent in

⁸²Ibid., 94.

⁸³Ibid.

⁸⁴Ibid., 95.

⁸⁵Ibid., 99.

⁸⁶Ibid.

household goods and chattels which remains in her possession should her husband initiate divorce.”⁸⁷

In terms of divorce, the husband has the right of divorce by *talaq* or repudiation or unilateral declaration after waiting a period of three menstrual cycles to ensure the woman is free from pregnancy or if pregnant to ensure the paternity.⁸⁸ The man must pronounce “I divorce you” twice after waiting three menstrual cycles and then on the third declaration the divorce is finalized without recourse by a court.⁸⁹ A wife may initiate divorce in a procedure known as *khul* however she sacrifices her dowry.⁹⁰ In general, Muslim men are permitted to marry non-Muslim women but the reverse does not apply.⁹¹

Sexuality

The Islamic faith, similar to many other world religions, has specific beliefs and views on the topic of sexuality and sexual relations. Ruthven points out that there are many patriarchal assumptions that pervade the sharia law as interpreted by most traditionalists. A man’s right to sexual satisfaction is divinely instituted and the wife does not have the right to refuse her husband’s sexual demands.⁹²

⁸⁷Ibid.

⁸⁸Ibid.

⁸⁹Ibid.

⁹⁰Ibid.

⁹¹Ibid., 100.

⁹²Ibid.

Historically, the prophet of Islam is “celebrated as enjoying not just the company of women but the pleasures of sex.”⁹³ The prophet is said to have married at least nine women, possibly as many as thirteen and in one translation of the Quran had intercourse with nine of his wives in a single night.⁹⁴ This historical example has been used to either depict the Prophet as a monster of sensuality or used as a defense that the Prophet married for political reasons to cement tribal alliances and/or to provide social security for several of his wives who were former widows.⁹⁵

Ruthven also briefly introduced the concept of Muslim or Islamic feminism which is discussed in greater detail in the following pages. Ruthven elaborated on the concept that Muslim feminists typically argue that it is not Islam as such but rather the “reactionary male interpretations of the faith that are involved to justify patriarchal attitudes.”⁹⁶ As previously discussed there are certain discriminatory provisions in the text of the Quran. Therefore an argument that the Quranic provisions are time contingent rather than absolute becomes necessary before the contradiction between the spiritual and moral equality for women and their legal inequality can be resolved.⁹⁷

⁹³Ibid.

⁹⁴Ibid.

⁹⁵Ibid.

⁹⁶Ibid., 113.

⁹⁷Ibid. The author provides an example that a woman giving evidence on a business matter might make sense under pre-modern conditions when most women were illiterate but as the Quranic rules stand the testimony of a woman with a degree in business administration is only worth half that of an illiterate male.

Indeed, the “biggest obstacles facing Muslim feminists are cultural and historical: feminism is perceived as coming from a hostile source.”⁹⁸

Islamic Feminism

In *Nine Parts of Desire: The Hidden World of Islamic Women*⁹⁹ written by Geraldine Brooks, an extensive discussion of Islamic feminism is addressed. Geraldine Brooks spent six years in the Middle East as a foreign correspondent for the *Wall Street Journal*. Ms. Brooks’ work, *Nine Parts Desire*, defined her understanding of women in the Islamic culture and of the often contradictory political, religious, and cultural forces that shape their lives.¹⁰⁰

In her conclusion, Ms. Brooks stated that she was searching for women in the Middle East that were trying to reclaim Islam’s positive messages and found it to be a frustrating search.¹⁰¹ Specifically Ms. Brooks cited Afghani woman as seeing “a curtain come down on decades of women’s liberation as Islamic leaders turned to the most

⁹⁸Ibid. Taking issue with the text of the Quaran is incredibly controversial as opposed to questioning the interpretation. Ruthven also introduced the concept of an “indigenous feminist” as one who sees a contradiction between the ethical principles of Islam with its commitment to social justice regardless of gender and the restrictions to which Muslim women became increasingly subjugated. For example, the practices sanctioned by Muhammad in the first Muslim society reflect more positive attitudes than the current era as compared to the later Abbasid era when the practice of concubinage sanctioned if not encouraged by Islam became widespread. One view is that the access to slaves and concubines led to women being treated as commodities as upper class women became increasingly marginalized and if the ethical voice of Islam had been attended to, it would have significantly tempered the extreme androcentrial bias of the law.

⁹⁹Geraldine Brooks, *Nine Parts of Desire: The Hidden World of Islamic Women* (New York: Anchor Books, 1996).

¹⁰⁰Ibid.

¹⁰¹Ibid., 92.

exclusionary and inequitable interpretations.”¹⁰² The most interesting point however and the author’s ultimate conclusion for positive change was found in devout Iranian women.¹⁰³ Ms. Brooks summarized that, “their conspicuous adherence to religious rules gives them a high ground from which to make their case for women’s rights.”¹⁰⁴

Ms. Brooks used women in various Middle Eastern countries to detail her search for feminism yet Brooks does not ever fully define feminism. One of the best resources for a definition of feminism is found on-line at *Countercurrents* in a discussion of Islamic feminism revisited. Ms. Margot Badran, a senior fellow at the Prince Alwaleed Bin Talal Center for Muslim-Christian Understanding, defined Islamic feminism as:

A feminist discourse and practice that derives its understanding and mandate from the Qur'an, seeking rights and justice within the framework of gender equality for women and men in the totality of their existence. Islamic feminism explicates the idea of gender equality as part and parcel of the Qur'anic notion of equality of all (human beings) and calls for the implementation of gender equality in the state, civil institutions, and everyday life. It rejects the notion of a public/private dichotomy (by the way, absent in early Islamic jurisprudence or fiqh) conceptualizing a holistic umma (worldwide Islamic community) in which Qur'anic ideals are operative in all space.¹⁰⁵

Ms. Badran also succinctly defined the task of Islamic feminism to both “expose and eradicate patriarchal ideas and practices guised as Islamic” and to “recuperate Islam’s core idea of gender equality which is indivisible from human equality.”¹⁰⁶ Due to this

¹⁰²Ibid.

¹⁰³Ibid.

¹⁰⁴Ibid.

¹⁰⁵Margot Badran, “Islamic Feminism Revisited,” *Countercurrents.Org*, <http://www.countercurrents.org/gen-badran100206.htm> (accessed 23 March 2009).

¹⁰⁶Ibid.

two-fold task, Islamic feminism has “incurred enemies from within and without the Muslim community.”¹⁰⁷ Specifically, “from within, there are men who fear the loss of patriarchal privilege and women who fear the loss of patriarchal protection and from without as those whose pleasure and politics are found in denigrating all of Islam as irredeemably anti-woman.”¹⁰⁸

Summary

The relevant review of literature revealed several concepts and themes worthy of mention. First, there is the importance of defining rule of law and recognizing that Western societies and Islamic societies might have differing definitions. These differences are highlighted in the contemporary application of rule of law to include the four views of contemporary Arab reform. One way to incorporate the many views of rule of law is to use the model for change established by Professor Kotter while keeping in mind the intense significance of sharia law. Not all of sharia law is contradictory to the premise of fundamental human rights, however; in several areas there are issues that need to be balanced including areas of family law. As a way to balance the more patriarchal system of sharia law, the concept of Islamic feminism becomes of radical importance. As the military and interagency community prepare and deliver rule of law programs, the voice of Islamic feminists must be heard. Chapter 3 discusses a methodology to use when creating rule of law programs in order to conduct the analysis in chapter 4.

¹⁰⁷Ibid.

¹⁰⁸Ibid.

CHAPTER 3

METHODOLOGY

Military interventions that do not ultimately rebuild the rule of law in post-conflict societies are doomed to undermine their own goals.¹⁰⁹

Although women's inclusion and equal participation can be a source of resistance in some cultures, the participation of women in government and the reconstruction period can also be a tremendous opportunity.¹¹⁰

General

The rule of law and specifically its impact on women requires the combination and understanding of several topic areas. With the genesis of Field Manual (FM) 3-07, *Stability Operations*,¹¹¹ there is an emerging need for the U.S. Army and the interagency community to pave the way for incorporating programs that benefit women in the rule of law arena. Professor Kotter's leading change model is one path to establish such inclusionary programs.

Included in the overall methodology is applying the principles of the 2008 FM 3-07,¹¹² in which rule of law is highlighted in multiple chapters. Rule of law is defined as "a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with *international*

¹⁰⁹Stromseth, Wippman, and Brooks.

¹¹⁰Gorove and Nachbar, 114.

¹¹¹U.S. Department of the Army, FM 3-07, *Stability Operations* (October 2008).

¹¹²*Ibid.*, 1-40.

human rights principles (emphasis added).”¹¹³ Additionally, the FM states that the rule of law “requires measures to ensure adherence to the principles of supremacy of law, *equality before the law* (emphasis added), accountability to the law, fairness in applying the law, separation of powers, participation in decision-making, and legal certainty.”¹¹⁴ Outlined below is a methodology developed to combine rule of law operations with an inclusion of programs directed towards fundamental rights of women. The model will briefly be introduced in this chapter and then analyzed in chapter 4.

Kotter’s Change Model

Establishing a Sense of Urgency

“Visible crises can be enormously helpful in catching people’s attention and pushing up urgency levels.”¹¹⁵ Professor Kotter’s view is that creating a strong sense of urgency usually “demands bold or even risky actions” that are normally associated with good leadership.¹¹⁶ These concepts all directly relate to establishing women’s rights as fundamental human rights in Afghanistan and Iraq.

“Increasing urgency demands that you remove sources of complacency or minimize their impact.”¹¹⁷ These teaching points of Kotter are indeed profound in the rule of law context with an emphasis on women. There is a great deal of complacency when it comes to women’s issues even in the U.S. as evidenced by the fact that the UN

¹¹³Ibid.

¹¹⁴Ibid.

¹¹⁵Kotter.

¹¹⁶Ibid.

¹¹⁷Ibid., 42.

CEDAW has languished in the Senate for over thirty years. Only recently have women's issues in the United States realized a reemergence on the national scene. As the United States works through the place of women and ending discrimination against women at home it is vital to launch a simultaneous effort for women of Afghanistan and Iraq in particular. Bold and risky actions are especially needed in the Middle East when it comes to taking leadership on increasing the standing of women and eradicating human rights violations.

While Kotter's first stage is primarily focused at a business audience, his views on senior management can be correlated to those in key positions that impact rule of law operations. Kotter imparted that, "if everyone in senior management is a cautious manager committed to the status quo, a brave revolutionary down below will always fail."¹¹⁸ Therefore one needs to apply leadership so as not to fail the brave revolutionary women and men in Afghanistan and Iraq that are making the case for women's rights as fundamental human rights.

Therefore the involvement of the U.S. military in women's issues in the Middle East is a somewhat bold and risky proposition yet it is of vital importance. There cannot be a true rule of law without fundamental human rights for all. As Afghanistan and Iraq establish new constitutions that contain provisions for women's rights, the time is ripe for true societal recognition of women's rights. A 2009 article in the *New York Times* praised Afghanistan for attaining a "more egalitarian notion of women's rights" that is now founded in the country's constitution and promoted for the first time by the established Ministry of Women's Affairs and a small community of women's

¹¹⁸Ibid., 48.

advocates.¹¹⁹ Additionally, in Iraq, there are many constitutional provisions that can create opportunities for women which will be addressed in a later chapter.

Due to the U.S. Army's involvement in stability operations, there is no better time than the present to continue to define an Army doctrine that can capture what is currently being accomplished in Afghanistan and Iraq and therefore formulate a unity of effort for those personnel involved in rule of law operations. Additionally, there is also great emphasis on inter-agency cooperation and rule of law potentially spanning multiple U.S. and international agencies.

Creating the Guiding Coalition

Professor Kotter in his second change stage emphasized the importance of creating the guiding coalition. It is acknowledged that major change is of course difficult to accomplish yet, "no one individual, even a monarch-like CEO, is ever able to develop the right vision" and get the entire change process complete single-handedly.¹²⁰ Indeed, a guiding coalition is always needed and one that has, "the right composition, level of trust and shared objective."¹²¹ One of the reasons why this combination is needed is that a guiding coalition that operates as an effective team, can process more information in a more expedient manner.¹²² An effective combination of personnel, the guiding coalition

¹¹⁹Kirk Semple, "Idea of Afghan Women's Rights Starts Taking Hold," *New York Times*, March 3, 2009.

¹²⁰*Ibid.*, 52.

¹²¹*Ibid.*

¹²²*Ibid.*, 55.

can also increase the speed of implementation of new approaches because powerful people are more closely informed and committed to key decisions.¹²³

Professor Kotter posited that instrumental to building the aforementioned team is finding the right membership. There are four key characteristics that Professor Kotter defined as essential to effective guiding coalitions. They are: (1) position power, (2) expertise, (3) credibility, and (4) leadership.¹²⁴ Position power is the explicit inclusion of key players in the change initiative so those persons cannot easily block progress. Expertise fundamentally entails that various points of view are adequately represented so that informed definitions can be made.¹²⁵ Credibility requires membership in the organization of those with solid reputations or those proven leaders that can drive the change process.¹²⁶ Overall, it is leadership that is the glue that will then hold everything together.

While Professor Kotter emphasized the importance of creating the team, he also zeroed in on one key aspect of the guiding coalition; that of trust. Simply put, “when trust is present you will usually be able to create teamwork. When it is missing, you won’t.”¹²⁷ Trust is perhaps the most important attribute that helps create a shared objective. Kotter identified that one of the main reasons people are not committed to overall excellence is that they do not trust fellow executives or other departments.

¹²³Ibid.

¹²⁴Kotter, 57.

¹²⁵Ibid.

¹²⁶Ibid.

¹²⁷Ibid., 61.

Therefore the combination of trust and a common goal can make for a powerful team. “It will have the potential at least to do the hard work involved in creating the necessary vision, communicating the vision widely, empowering a broad base of people to take action” and move through the other stages of effecting change.¹²⁸

Developing a Vision and Strategy

In order to get somewhere you need to know where you are going. Therefore out of all of Kotter’s steps, this is perhaps one of the most critical steps especially in terms of rule of law operations. Professor Kotter defined vision as “a picture of the future with some implicit or explicit commentary on why people should strive to create that future.”¹²⁹ Professor Kotter also enumerated three important purposes for a vision.

The first purpose of a vision is to clarify the general direction for change. Professor Kotter explains it as the “corporate equivalent of “we need to be south of here in a few years instead where we are today,” it simplifies hundreds or thousands of more detailed decisions.”¹³⁰ The second purpose of a vision is to motivate people to take action. Action can sometimes be painful either personally or professionally but sometimes the pain is necessary to reach the desired end state. A good vision “acknowledges that sacrifices will be necessary but makes clear that these sacrifices will yield particular benefits and personal satisfactions that are far superior than those

¹²⁸Ibid., 65.

¹²⁹Ibid., 68.

¹³⁰Ibid.

available today.”¹³¹ Finally the third purpose of vision is to coordinate the actions of different people in a remarkably fast and efficient way.¹³²

In essence then, “clarifying the direction of change is important, because more often than not, people disagree on direction, or are confused, or wonder whether significant change is really necessary.”¹³³ The benefit of an effective vision is that vision and back-up strategies will resolve these issues.

The most descriptive part of Professor Kotter’s chapter on developing a vision and strategy is found in the characteristics of an effective vision. Professor Kotter stated that a vision must be imaginable, desirable, feasible, focused, flexible, and communicable.¹³⁴ For Professor Kotter an ineffective vision is better than no vision at all. Therefore, the need for a vision is of vital importance; a vision must have a direction for the future that is “desirable, feasible, focused, flexible, and is conveyable in five minutes or less.”¹³⁵ Indeed those working in rule of law programs need to keep these characteristics at the forefront of any and all planning.

Communicating the Change

A vision is essentially only as good as the means and methods that are used to communicate that vision. In Afghanistan where the population is highly illiterate, much

¹³¹Ibid.,70.

¹³²Ibid., 69.

¹³³Ibid.

¹³⁴Ibid., 72.

¹³⁵Kotter, 85.

needs to be considered in terms of communicating effectively the vision so all people can understand the vision. Professor Kotter identified multiple key elements that are necessary for the effective communication of vision. These key elements include simplicity, using metaphors and analogies, using multiple forums, repetition, leadership by example, explanation of seeming inconsistencies, and give and take.¹³⁶

Simplicity in this context is explained as “focused, jargon-free information” that can be disseminated to large groups of people at a fraction of the “cost of clumsy complicated communication.”¹³⁷ In theory and in reality, communication seems to work best when it is so direct and so simple that it has a sort of elegance.¹³⁸ Also, the use of metaphor, analogy, and example are also ways to communicate a vision in an easy to understand manner. Professor Kotter highlighted that well chosen words can make a message memorable even if it has to communicate with many other forms of communication for people’s attention.¹³⁹

“Vision is usually communicated most effectively when many different vehicles are used: large group meetings, memos, newspapers, posters, informal one on one talks.”¹⁴⁰ Indeed when the same message is sent from six different directions it stands a better chance of being heard and remembered on intellectual levels as well as emotional

¹³⁶Ibid., 90.

¹³⁷Ibid., 89.

¹³⁸Ibid.

¹³⁹Ibid., 93.

¹⁴⁰Ibid.

levels.¹⁴¹ Coinciding with this concept is the idea that effective information transfer also almost always relies on repetition.¹⁴² Professor Kotter challenges that collectively brief mentions of information can add up to massive amounts of useful communication that are generally what is needed to win over both hearts and minds.¹⁴³

As always, one of the most powerful ways to communicate a new direction is through behavior. In essence, “words are cheap but action is not.”¹⁴⁴ The converse of this proposition is also true in that “telling people one thing and then behaving differently is a great way to undermine the communication of a change vision.”¹⁴⁵ Dovetailing with behavior is also the honesty of dealing with inconsistencies in the message. In successful transformations, “important inconsistencies in the messages employees are getting are almost always addressed explicitly.”¹⁴⁶ If mixed signals or mixed messages can not be eliminated then the best alternative approach is to simply explain them in an honest and forthright manner.

Communication of vision is a very difficult activity but it is made easier through communication that is a two-way endeavor. “Two-way discussions are an essential method of helping people answer all the questions that occur to them in a transformation

¹⁴¹Ibid.

¹⁴²Ibid.

¹⁴³Ibid., 95.

¹⁴⁴Ibid., 96.

¹⁴⁵Ibid.

¹⁴⁶Ibid., 99.

effort.”¹⁴⁷ Professor Kotter stated this concept best when he described change initiators as sometimes avoiding a two way discussion for fear “we are afraid our visions won’t survive two rounds in a ring.”¹⁴⁸ Such behavior is understandable but regrettable.¹⁴⁹

Empowering Broad-Based Action

“Discouraged and disempowered employees never make enterprise winners in a globalizing economic environment.”¹⁵⁰ However, as Professor Kotter pointed out with the right structure, training, systems, and supervisors to build on a well communicated vision, an enormous source of power can be generated.¹⁵¹ In this chapter on empowering broad-based action, Professor Kotter focused on the basics. For example, if employees have a shared sense of purpose then it will be easier to achieve actions to achieve that purpose.¹⁵² Also, attitude is everything and without the right skills and attitudes it is easy for people to feel disempowered. Indeed there is nothing that disempowers people more than a bad boss can.¹⁵³

Professor Kotter in this phase of encouraging and promoting change, focused on empowerment. Essentially, empowering others to affect change includes communicating

¹⁴⁷Ibid.

¹⁴⁸Ibid., 100.

¹⁴⁹Ibid.

¹⁵⁰Ibid., 114.

¹⁵¹Ibid., 115.

¹⁵²Ibid.

¹⁵³Ibid.

a sensible vision, providing training, aligning information, and personnel systems to the vision and then confronting supervisors who undercut the needed change.¹⁵⁴

Generating Short Term Wins

Professor Kotter in this stage highlighted the many benefits of short term wins. Short term wins can provide evidence that short-term sacrifices are worth long term gains, can reward the agents of change, can fine-tune vision and strategies, can undermine cynics and critics, can keep higher level bosses on board, and can ultimately build momentum and gain supporters.¹⁵⁵

Specifically, Professor Kotter diagnosed that short term performance improvements help transformations in at least six ways. Short term wins can give the effort needed reinforcement to show that sacrifices are paying off and the vision is gaining momentum.¹⁵⁶ For those that are driving the change, little wins offer an opportunity to celebrate. Constant tension for long periods of time is not healthy and is counter-productive. The process of producing short-term wins can help a guiding coalition tests its vision against concrete conditions.¹⁵⁷ Another benefit of short term wins is that they can undermine the “efforts of cynics and major league resisters.”¹⁵⁸ According to Kotter, “the more cynics and resisters, the more important are short term

¹⁵⁴Ibid.

¹⁵⁵Ibid., 123.

¹⁵⁶Ibid., 122.

¹⁵⁷Ibid.

¹⁵⁸Ibid., 123.

wins.”¹⁵⁹ It is vital in this stage to turn fence sitters into supporters and then reluctant supporters into active participants.¹⁶⁰

Consolidating Gains and Producing More Change

“Whenever you let up before the job is done, critical momentum can be lost and regression may follow.”¹⁶¹ Professor Kotter identified this aforementioned principle as one of the cardinal rules of affecting change. Until changed practices attain a new equilibrium and have been driven into the culture they can be very fragile and need to be treated as such.¹⁶²

Professor Kotter stated that a guiding coalition can capitalize on the credibility afforded by short term wins to tackle additional and more substantial projects.¹⁶³ Additional people can be brought in at this stage and developed and/or promoted to the next level. Those that are in senior roles can focus on maintaining the clarity of the shared purpose and can keep urgency levels high.¹⁶⁴ Those that are lower in the hierarchy can provide leadership for specific projects.

¹⁵⁹Ibid.

¹⁶⁰Ibid.

¹⁶¹Ibid., 133.

¹⁶²Ibid.

¹⁶³Ibid., 143.

¹⁶⁴Ibid.

Anchoring New Approaches in the Culture.

Professor Kotter's final step to enact lasting change is to anchor change in a culture to include the requirements of dialogue as well as turnover of key leaders to those that are open-minded and representative of a cross-section of the population.¹⁶⁵ Specifically, without verbal instruction and support, people are often reluctant to admit the validity of new practices.¹⁶⁶ Additionally, sometimes the only way to change a culture is to change key people.¹⁶⁷

Stepping back, culture is defined as "norms of behavior and shared values among a group of people."¹⁶⁸ Norms of behavior are those common or pervasive behavior patterns that are found in a group and that persist because group members tend to act in these ways and teach these ways to new members, rewarding those who fit in and sanction those who do not.¹⁶⁹ Shared values are those concerns or goals shared by a majority of the group that tend to shape the behavior of the group and often continue over time even when group membership changes.¹⁷⁰

Professor Kotter quite profoundly stated that "culture is not something that you manipulate easily. Attempts to grab it and twist it into a new shape never work because

¹⁶⁵Ibid., 157.

¹⁶⁶Ibid.

¹⁶⁷Ibid., 156.

¹⁶⁸Ibid., 148.

¹⁶⁹Ibid.

¹⁷⁰Ibid.

you can't grab it.”¹⁷¹ Instead as Kotter pointed out, culture changes only after you have successfully altered people's actions, after the new behavior produces some group benefit for a period of time, and after people see the connection between the new actions and the performance improvement.¹⁷²

Summary

Professor Kotter's eight stage model for leading change includes: (1) Establishing a sense of urgency, (2) Creating the guiding coalition, (3) Developing a vision and strategy, (4) Communicating the change, (5) Empowering broad-based action, (6) Generating short term wins, (7) Consolidating gains and producing more change, and (8) Anchoring new approaches in the culture.¹⁷³ Kotter's entire eight stage change model directly applies to implementing rule of law programs in Afghanistan and Iraq. specifically the implementation of rule of law programs that directly impact women. This model of change can be applied by the military in a more strategic view as it further defines and refines stability operations doctrine. The next chapter will analyze the treaty obligations that the U.S., Afghanistan, and Iraq are and are not committed to, specifically the CEDAW. Additionally the constitutions of Afghanistan and Iraq will be explored for use as a baseline to determine the best direction for future rule of law programs with a focus on women.

¹⁷¹Ibid., 156.

¹⁷²Ibid.

¹⁷³Ibid.

CHAPTER 4

ANALYSIS

The position of women in Muslim society mirrors the destiny of Islam: when Islam is secure and confident so are its women; when Islam is threatened and under pressure, so, too, are they.¹⁷⁴

The position stability of Islamic women is related to the stability of the nation in which they live. Since the basic tenet of rule of law operations is to provide stability in all forms, it is critical that stability operations include and focus on the female population as a central focus. There is nothing more essential to a nation's stability than the legal conventions, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁷⁵ that the nation has ratified as well as the very constitutions that are in place for the nation to exist.

Chapter 3 discussed the framework for leading change to incorporate women into the rule of law equation. This chapter will describe some of the specific ways in which change is needed in Afghanistan and Iraq and specifically due to the conditions for women created in CEDAW and the constitutions of the respective nations. This chapter will also weave in the concepts of Professor Kotter's change model as applicable. Detailed conclusions, recommendations for additional research, and recommendations for implementation of the research question are presented in chapter 5.

¹⁷⁴Jan Goodwin, *Price of Honor*, (New York: Penguin Publishing Group, 2003), 46. Quotation by Akbar S. Ahmed, an Islamic Scholar with degrees from Princeton and Harvard when asked about the situation for women in Islamic society.

¹⁷⁵Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 43-46, at 193, U.N. DOC. A/34/46 (1980), <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (accessed 23 March 2009).

Kotter's Model Analysis

Professor Kotter's change model was discussed in Chapter 3 and it is typically applied to business examples . However Professor Kotter's model directly correlates to rule of law programming. In stage one, in terms of establishing a sense of urgency, there is no greater time than the present to focus on women's rights as fundamental. In Afghanistan and Iraq as will be discussed later in this chapter, the constitutions of each country require that women's rights are fundamental. The essence of rule of law operations is to support the laws that are in force and are valid and ensure justice for all. This constitutional requirement as well as treaty obligations, elevates women's rights from discretionary to required.

In stage two, Professor Kotter discussed the importance of a guiding coalition. In rule of law operations there is perhaps nothing more significant than the coalition that is created. Afghani and Iraqi leaders must "buy in" to rule of law programs. In addition to key leaders such as judges, law enforcement, and political leaders, when working on rule of law programs involving women, Islamic feminists must be involved in the equation. The persons involved should not just be those with privileged backgrounds but the key players should include women from all different backgrounds and socioeconomic upbringing to present varying expertise and opinions.¹⁷⁶

In rule of law operations, typically there are representatives from the U.S Department of State and the U.S. Department of Justice. However, a non-governmental

¹⁷⁶Elizabeth Warnock Fernea, *In Search of Islamic Feminism* (New York: Anchor House Press, 1998), 305.

entity such as the American Bar Association Rule of Law Initiative also has a rule of law project that could be useful to the U.S. Army.¹⁷⁷ Additionally, there is an Arabic Women's Legal Association¹⁷⁸ that also might make significant contributions to the U.S. Army efforts. These two organizations are only the tip of the iceberg in terms of including non-governmental key players in the guiding coalition. Representatives from these and other agencies could provide additional credibility as well as leadership to the guiding coalition.

Regarding developing a vision and a strategy, Professor Kotter established that a fully developed and supported vision is essential to successful change. From a rule of law perspective as projects are completed such as ground-breaking ceremonies for a legal center for women for example, additional personnel can be hired to work at the center as well as advertise the services offered at the center. It takes a vision to create the idea of a legal center for women with an adjoining medical care facility geared towards women's health needs. As the vision becomes more and more concrete, the project moves from

¹⁷⁷The ABA Rule of Law Initiative is a public service project of the American Bar Association dedicated to promoting rule of law around the world. The ABA Rule of Law Initiative believes that rule of law promotion is the most effective long-term antidote to the pressing problems facing the world community today, including poverty, economic stagnation, and conflict. Information found on the ABA website at <http://www.abanet.org/>.

¹⁷⁸Coordinated by the American Bar Association (ABA)/CEELI, this program supports a professional association for women who work in the legal profession in the Middle East. Inclusion of the Arabic Women's Legal Association (AWLN) as a key player will enable exchange of expertise and support on some of the key issues affecting women and the law, including the lack of information for women in the legal profession, including networking and mentoring; insufficient awareness of women's legal rights and issues concerning equality before the law; and the need for comparative interpretations and applications of Sharia' law. Launched in July 2005, AWLN is registered and based in Jordan, but has a Middle East regional focus.

meetings and conferences to groundbreaking and actual construction until ultimately the doors open to greet incoming clients. The vision and the way ahead are essential in order to achieve goals of any size or magnitude.

Stage four of Professor Kotter's Model is the importance of communicating the change. Regarding communicating the change to the local population in rule of law programs, there are many ways that rule of law programs can be communicated to the local population they are intended for. Even more fundamentally though it is necessary for internally, through the Department of Defense service schools and military publications, the rule of law should be highlighted as new doctrine and promoted as worthy of careful study and consideration. Rule of law programs are visionary and are about change in systems. Therefore rule of law needs to be communicated to those in the Department of Defense and especially those working in rule of law operations. Rule of law doctrine weaves together strategic level creation and cooperation while focusing on the benefits of U.S. Army "wins" via strategic communication to form a critical component of stability operations which is a link to future success. Rule of law should not be viewed as a specialty line of operation but as one of the most basic lines of operation that is woven throughout all actions of the military. These principles need to be clearly communicated and studied by all rule of law personnel.

Professor Kotters next stage, that of empowering broad-based action, is especially important in rule of law projects. In order for rule of law projects to take effect, the elected officials need to enact law, the police need to enforce the law, and the judicial system to include judges need to analyze the law to ensure justice and fairness. Rule of law projects cannot simply be aimed at judges. Rule of law projects need to also work

with police, elected officials to include tribal leaders as well as parliamentary officials and incorporate the efforts of advocacy groups such as those involved with instituting women's rights.

The sixth stage of generating short term wins is critical in rule of law operations. In traditional rule of law projects such as court houses rebuilding projects, these short term wins should be included as part of the U.S. Army's strategic communication methods as well as information operations. Turning specifically to projects involving women's rights, the same gains can be made by focusing on short term wins. For example, opening a legal center for women with an adjoining health clinic is a tremendous undertaking. However, holding a series of meetings and press conferences to discuss the idea and planning for the groundbreaking is a short term win that will help propel the project forward.

Professor Kotter in the seventh stage of his change model, highlighted the importance of consolidating gains and producing more change. In rule of law projects the momentum is important and with each successful rule of law project, another one should already be underway in the planning stages. Rule of law is a dynamic and fast paced area and requires building on the momentum of success.

Finally, the last stage of the change model is anchoring new approaches in the culture. This stage, along with the other aforementioned stages, will be discussed in greater detail in the following pages. The CEDAW is the mechanism for anchoring new approaches in the culture.

Treat your women well, and be kind to them. Prophet Mohammed¹⁷⁹

CEDAW: The Women's Treaty

The CEDAW is often described as an international bill of rights for women.¹⁸⁰ The CEDAW is also an illustrative example of Professor Kotter's anchoring new approaches in the culture principle. Consisting of a preamble and 30 articles, the CEDAW defines what constitutes discrimination against women and sets a framework for national action to end such discrimination.¹⁸¹ The Convention was entered into force on September 3, 1981 and has as of April 1, 2009 has one hundred eighty-five state parties which accounts for over ninety percent of the United Nations.¹⁸² The U.S. has not ratified this treaty; however, Afghanistan ratified the CEDAW in 2003 and Iraq ratified the CEDAW with reservations in 1986. The CEDAW has "technically been on the agenda of the U.S. Senate for the better part of three decades, but conservative elements have always prevented a full Senate vote."¹⁸³ There is speculation that with a Democratic Congress and a President who supports the treaty that the CEDAW might have a chance at ratification.¹⁸⁴ The CEDAW is by many accounts the first international treaty to

¹⁷⁹Goodwin, 29.

¹⁸⁰Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 43-46, 193, U.N. DOC. A/34/46 (1980), <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> (accessed 23 March 2009).

¹⁸¹Ibid.

¹⁸²Ibid.

¹⁸³Megan Carpenter, "A New State of Mind," *MS Magazine*, Spring 2009, 44.

¹⁸⁴Ibid.

comprehensively address fundamental rights for women in politics, health care, education, economics, employment, law, property, and marriage and family relations.

CEDAW defines discrimination against women as:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.¹⁸⁵

By accepting the Convention, member states commit themselves to undertake a series of measures to end discrimination against women in all forms including to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws, and adopt appropriate ones prohibiting discrimination against women.¹⁸⁶

The CEDAW also provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in political and public life including the right to vote and to run for public office as well as education, health, and employment. The CEDAW is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.¹⁸⁷ Additionally, the CEDAW reinforces a woman's right to acquire, change, or retain their nationality and the nationality of their

¹⁸⁵Ibid. Convention, Article 1, Section 1.

¹⁸⁶Ibid.

¹⁸⁷Ibid.

children. State parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.¹⁸⁸

It can be argued that a plain reading of the CEDAW does not reveal any controversial or extreme ideas. The basic goal of the CEDAW appears to be the realization of equality between women and men.¹⁸⁹ There has been much controversy surrounding the CEDAW; so much controversy that the U.S. is not a party to the Convention and many nations have signed it with reservations arguably due to the mandate of cultural change that is interpreted in the document. Specifically there are also three topics that have raised heated debates among state and non-state parties. These three topics are: (1) abortion, (2) familial interference, and (3) prostitution.

The Abortion Debate

Article 12 of the CEDAW mandates that, “State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services,

¹⁸⁸Ibid.

¹⁸⁹Rosa Ehrenreich Brooks, *Feminist Justice, at Home and Abroad: Feminism and International Law: An Opportunity for Transformation*, 14 Yale Journal of Law and Feminism 345 (2002). However, even this concept of “equality” alone can be controversial in terms of a “feminist” view of why should women want the very same thing men have? Ms. Ehrenreich Brooks states: Women face different reproductive choices and different social constraints than do men. Is the male standard the right standard for women? For that matter, is the male standard the right standard for men? Yet in CEDAW we see no hint that there is anything fundamentally wrong, or even questionable, in the way social and political relations and structures are organized within the state. CEDAW suggests that nothing need be changed except stereotypes and formal barriers to access: just let the women in and that’s that. CEDAW and other human rights conventions thus take it for granted that the rights that “matter” most are precisely the rights that have, historically, mattered most to male political elites: that is, civil and political rights.

including those related to family planning.”¹⁹⁰ By promoting access to family planning, the CEDAW cannot be read as supporting abortion rights or taking a position on abortion either for or against. There is no other provision in the CEDAW that mandates abortion or contraceptives, sex education without parental involvement or any other “controversial” reproductive rights issue.¹⁹¹ The CEDAW does not create an international right to an abortion as many opponents argue. Instead, CEDAW on its face is neutral to the whole discussion of abortion and other reproductive rights issues allowing policies to be created by the signatory states. It is so neutral on its face that several countries in which abortion is illegal, among them Ireland, Rwanda, and Burkina Faso, have ratified the CEDAW.¹⁹²

The International Islamic Committee for Women and Child (IICWC)¹⁹³ in their publication, *A Critical Review of the Convention on the Elimination of All Forms of Discrimination against Women*, did not offer any commentary that they believe Article

¹⁹⁰CEDAW, Article 12.

¹⁹¹Koh, 273.

¹⁹²Ibid.

¹⁹³The IICWC was founded in 1994 and the organization’s objectives are: 1. Preserve the Islamic identity of Muslim women and children, and face all plans aiming at stripping them of it. 2. Present the prestigious value of women in Islamic Sharia. 3. Improve and promote Muslim women in all areas (education, health, economy, intellect ...etc.) through symposia and training programs. 4. Unify exerted efforts of Muslim organizations and entities that represent women and children. <http://translate.google.com/translate?hl=en&sl=ar&u=http://www.iicwc.org/&ei=GfzjSeegDIOQtAPznYC5CQ&sa=X&oi=translate&resnum=4&ct=result&prev=/search%3Fq%3DInternational%2BIslamic%2BCommittee%2BFor%2BWoman%2B%2526%2BChild%2B-%2BIICRC%2B...%26hl%3Den%26sa%3DX> (accessed 23 March 2009).

12 creates a right to an abortion.¹⁹⁴ The IICWC offers from their perspective a more comprehensive view that, “Article 12 is acceptable, and we call for more detailed paragraphs that ensure women, especially poor women, receive protection and support in order to receive full health care in all areas, not just pregnancy and family planning.”¹⁹⁵

Allegations of Familial Interference

The CEDAW in Part IV, Article 16, provides a list of measures designed to assist in ending discrimination against women in all matters relating to marriage and family relations such as:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

¹⁹⁴IICWC Research Unit, A Critical Review of the Convention on the Elimination of all forms of Discrimination Against Women.72 (2000) <http://www.iicwc.org/old/CEDAW-EF1.doc> (accessed 23 March 2009).

¹⁹⁵*Ibid.*

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.¹⁹⁶

These provisions do not interfere in the parents role in the childrearing process but instead call for recognition of the “common responsibility of men and women in the upbringing and development of their children” and to “promote what is in the best interests of the child.”¹⁹⁷ It is difficult if not impossible to argue that these stated objectives are contrary to the laws of the U.S..

Additionally some pundits argue that U.S. ratification of the CEDAW would require legalizing same-sex marriages. Article 16 of the CEDAW only requires elimination of discrimination directed against women “in all matters related to marriage and family relations.”¹⁹⁸ Therefore, practices of polygamy would be inconsistent with the CEDAW because it undermines women’s equality with men and potentially creates severe financial inequities.¹⁹⁹ Arranged marriages or “entertainment marriages”²⁰⁰ would

¹⁹⁶CEDAW, Part IV, Article 16.

¹⁹⁷Ibid.

¹⁹⁸Ibid.

¹⁹⁹Koh, 273.

²⁰⁰Houzan Mahmoud, *An Empty Sort of Freedom*, GUARDIAN, March 8, 2004, <http://translate.google.com/translate?hl=en&sl=ar&u=http://www.iicwc.org/&ei=GfzjSee gDIOQtAPznYC5CQ&sa=X&oi=translate&resnum=4&ct=result&prev=/search%3Fq%3DInternational%2BIslamic%2BCommittee%2BFor%2BWoman%2B%2526%2BChild%2B-%2BIICRC%2B...%26hl%3Den%26sa%3DX balpolicy.org/security/issues/iraq/occupation/2004/0308emptyfreedom.htm> (accessed 23 March 2009). An entertainment marriage is defined as an “Islamic form of prostitution in which rich men marry women temporarily (often for only a few hours) in return for money.”

also be eradicated as they undermine women's equality with men. Overall, it is merely a common sense interpretation that Article 16 would neither require nor bar any national laws regarding same-sex marriage, which by their nature would apply equally to men and women.²⁰¹

It is interesting to note that the IICWC described Article 16 as the “most dangerous” article in the Convention and that it “represents the Western style of life and ignores the convictions and traditions of the rest of the world.”²⁰² However, the IICWC does not offer concerns regarding the concepts of same-sex marriages. Instead the IICWC is most concerned with the many other conflicts between the text and Islamic law.²⁰³

Prostitution

Article 6 of the CEDAW succinctly states that “state parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”²⁰⁴ Somehow, however, opponents have managed to argue that ratification of the CEDAW would require decriminalization of prostitution

²⁰¹Koh, 273.

²⁰²IICWC Research Unit at 80.

²⁰³Ibid., 82. By way of example, the IICWC discusses the issue of the family name which is referenced in paragraph (g). “The convention calls for granting women equal rights to choose a family name. Islam does not permit giving children other than their father's name: □ call them by (the names of) their fathers□ (Qur'an Surah AlAhzab 33: 5). Islamic Shari`ah dictates that a woman keep her family name after marriage rather than take the husband's family name.”

²⁰⁴CEDAW, Part IV, Article 16.

yet the plain text of the Convention requires that prostitution be “suppressed.”²⁰⁵ Again, turning to the IICWC’s interpretation, this article is viewed as protecting the dignity of women. Specifically the IICWC states that:

Article 6 is intent on protecting women's dignity. Islamic Sharia is yet even more intent on women. It not only forbids prostitution and trade in women, but also obligates a woman's closest male kin to financially sustain and support her. It also forbids all forms of exploitation of the female body in the media through sex and violence in print, movies and commercials.²⁰⁶

The four arguments summarize what appear to be the common theories on why the CEDAW has not been ratified by the U.S. Turning to a more international perspective, it is important to note that while many member nations have ratified the CEDAW, many have done so with reservations. Additionally, as illustrated briefly by examples from the IICWC, one representative Islamic Women’s organization does not interpret the CEDAW as the critics do in the U.S. It appears that the biggest reservation from those that are member states and those that are not, is the opposition of the mandate for cultural change.

²⁰⁵The CEDAW Committee has recommended the decriminalization of prostitution in specific countries, such as China, where prostitution and trafficking of women and children are rampant, but not for all countries in general.

²⁰⁶IICWC Research Unit, 65.

The Mandate for Cultural Change?²⁰⁷

The CEDAW is a law that expressly seeks to change culture by mandating gender equality in a world that is typically not gender equal. In Afghanistan and Iraq when implementing rule of law programs and especially those targeting the rights of women, empowerment is the most critical agent of change. Judges, law enforcement, and political leaders need to be empowered to lead the change and trained on how to effect the change. Rule of law programs implemented by the military with interagency providers can assist in this effort.

While the CEDAW has evoked a reaction in the U.S. causing it to languish for years in the Senate, a reaction has also been evoked from the world community. A quick glance at the CEDAW website indicates many signatories and almost as many declarations and reservations.²⁰⁸

The CEDAW is an example of Professor Kotter's eighth stage, anchoring new approaches in the culture. First and foremost, the U.S. has yet to anchor this new change, that of supporting the UN Convention, in our own nation. As Professor Kotter stated, "sometimes the only way to change culture is to change key people" in leadership roles. With a Democratic Congress and a Democratic President who has already indicated his

²⁰⁷Berta Esperanza Hernandez-Truyol, *Glocalizing Law and Culture: Towards A Cross-Constitutive Paradigm*, 67 Alabama Law Review 617. It is important to define what is exactly meant by culture. For purposes of this paper, I have adopted the definition found in this law review which defines culture as: Those trappings that form one's identity and influence one's perception of the world. Culture has both abstract and concrete qualities: it is a complex of information that provides meaning for an individual or community in particular. Culture also is very much tied into the law and a basic presumption that law is a derivation of the culture that surrounds it, i.e. that law is a mirror of society that operates to maintain social order.

²⁰⁸CEDAW, Preamble.

support for the CEDAW, this approach might be soon anchored in the culture of the United States.

Additionally, Afghanistan and Iraq are already signatories to the CEDAW and now with their constitutions which will be discussed at the conclusion of this chapter, appear to be gearing up to anchor the CEDAW into their cultures. Afghanistan's constitution specifically emphasizes the importance of supporting all treaty obligations and will be discussed in greater detail at the conclusion of this chapter. The main point is that as Professor Kotter stated, change needs to be anchored in the culture and CEDAW is one such instrument of change that can be utilized as an anchoring mechanism to secure the importance of women's rights.

From its preamble to its concluding articles, the CEDAW seeks to mandate cultural change. The Preamble begins with the statement that, "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women"²⁰⁹ and concludes in Article 13 that state parties must take measures to eliminate discrimination against women specifically including the "right to participate in all aspects of cultural life."²¹⁰

Article Three requires that states take measures in all fields, including the "cultural field," to ensure the exercise and enjoyment of "human rights and fundamental freedoms on the basis of equality with men."²¹¹ Article Five requires that states modify the social and cultural patterns of the conduct of men and women with a view to

²⁰⁹Ibid.

²¹⁰Ibid., Article 13.

²¹¹Ibid., Article 3.

achieving the elimination of “prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”²¹² Therefore, the CEDAW does seek to change culture. It is noted that:

Ratification of the treaty evidences a willingness of states to have law change culture at least at the formal state level. On the other hand the reservations to CEDAW show that some cultural traditions remain impermeable to attempted legal change and that the states are willing to use the weight of their international legal personality to prevent such change.²¹³

Afghanistan has ratified the CEDAW and Iraq is an example of a nation that has acceded to the CEDAW with reservations. Some of the reservations are in critical sections of the CEDAW.²¹⁴ For example, Iraq essentially acceded to the CEDAW with the exception of several key provisions. The key provision exceptions include the taking of all measures to modify or abolish existing laws that constituted discrimination of women including penal provisions and the granting of women equal rights with men with regard to the nationality of their children. Iraq also totally disavowed any acceptance of Article 16 which was previously discussed regarding familial relationships. Iraq relied

²¹²Ibid., Article 5.

²¹³Hernandez-Truyol, 623.

²¹⁴CEDAW, reservations. The full text of Iraq’s Reservations follow: 1. Approval of and accession to this Convention shall not mean that the Republic of Iraq is bound by the provisions of article 2, paragraphs (f) and (g), of article 9, paragraphs 1 and 2, nor of article 16 of the Convention. The reservation to this last-mentioned article shall be without prejudice to the provisions of the Islamic *Shariah* according women rights equivalent to the rights of their spouses so as to ensure a just balance between them. Iraq also enters a reservation to article 29, paragraph 1, of this Convention with regard to the principle of international arbitration in connection with the interpretation or application of this Convention 2. This approval in no way implies recognition of or entry into any relations with Israel.

on its adherence to Sharia as did most of the Islamic states that have signed the Convention but issued a wide range of reservations.²¹⁵

The CEDAW is a vehicle or agent of cultural change. Some nations, like the U.S., have failed to even attempt to embrace the cultural change that it would need to make in order to be a member state. The U.S. would need to overcome its fears of loss of sovereignty and ceding to abortion among other concerns. Other nations, particularly some Islamic nations, have taken the first tentative steps to embrace the ideals espoused in the CEDAW. However these nations still cling to Sharia and battle culture and tradition versus a western view of equality. Included in this equation and not even touched on is the idea that it is difficult to isolate “women” based on whether they are “western women” or “third world women” as these “monolithic categories carry a lot of baggage: assumptions of wealth, education, work and progress, on the one hand, and of poverty, oppressive traditions, illiteracy and overpopulation on the other.”²¹⁶ In reality however,

Women are constituted as women through the complex interaction between class, culture, relation, and other ideological institutions and frameworks. CEDAW must somehow translate into greatly diverging worlds in which some political systems do not even allow women to vote where as other systems only practice subtle forms of discrimination.²¹⁷

²¹⁵Urfan Khaliq, “Beyond the Veil?: An Analysis of the Provisions of the Women’s Convention in the Law as Stipulated in Shari’ah,” *Buffalo Journal of International Law* 1, 3, no. 2 (1995).

²¹⁶Hilary Charlesworth, “Symposium on Method in International Law: Feminist Methods in International Law,” *Arizona Journal of International Law*, no. 93 (1999), 379, 383.

²¹⁷*Ibid.*

Additionally, it is incredibly naïve to think that the CEDAW will solve all of the inequalities among women all over the world and the mere fact of the U.S. finally ratifying the CEDAW or Iraq and other member states removing their reservations will cause great and significant change. However, both of these steps would significantly assist in the purpose of the CEDAW which is essentially to “ensure that state parties move progressively toward elimination of all forms of discrimination against women.”²¹⁸ The fact remains that Afghanistan and Iraq are committed to the CEDAW, and the U.S. in their capacity as occupier and now as an agent of stability operations is required to enforce it. This is one of the great challenges of rule of law operations for the U.S., enforcing laws that a nation has not adopted as their own.

The Quandary of Occupation and Respecting the CEDAW in Afghanistan and Iraq

Under the conditions of occupation, Article 43 of the Hague Regulations demands that the occupier satisfy two basic requirements. First, the occupier has the requirement of taking all the measures in their power to “restore, and ensure as far as possible, public order and safety.”²¹⁹ Second, Article 43 also demands that the occupier respect, unless absolutely prevented, “laws in force in the country.”²²⁰ How does the CEDAW fit into these two requirements?

Whether or not the CEDAW has an impact on the public order and safety of women in Afghanistan and Iraq is a very difficult analysis. Arguably the CEDAW does

²¹⁸Koh, 272.

²¹⁹Greenwood, 246.

²²⁰Hague Regulation, Article 43.

have a very positive impact on the safety of women worldwide. However certain scenarios could exist where the CEDAW, if imposed, could have disastrous effects. For example in Iraq, where honor killings are still carried out, if the U.S. as occupier were to remove these laws, would there be a revolt? And would the anger be directed at the U.S. as occupier or at women caught in the crossfire?

This dilemma is part of the second requirement of respecting laws when conducting rule of law operations. Here, the U.S. as former occupier and now involved in stability operations, is not a party to the CEDAW. The U.S. is however working with Afghanistan and Iraq and Iraq is a party to the CEDAW but with reservations and Afghanistan is a signatory to the convention without reservation. This ironic situation is one of the many legal dilemmas of occupation and stability operations that follow that need to be addressed; including not only in the laws of occupation but also incorporating the dominating influences of culture, tradition, religion, and respect for another world-view.²²¹ Indeed, this aforementioned quandary directly relates to Professor Kotter's step three of his change model, developing a vision and a strategy.

As those involved in rule of law wrestle with this difficult conundrum, it is helpful to keep Professor Kotter's analysis at the forefront. Professor Kotter described the relationship of vision, strategies, plans, and budgets as follows: vision is a sensible

²²¹There is also the dilemma of serving as an occupier in a country that has a completely different legal system. *See* Iraq Law, Iraq Update, at http://gulf-law.com/iraq_law.html. The main laws of general application in Iraq prior to occupation were based on "the Civil Code Law No. (40) of 1951, which regulates civil and general contractual transactions." This Civil Code was promulgated during the monarchy based on Islamic law (Shariah) and European legal concepts mainly the French laws incorporated into the Egyptian Civil Code.

and appealing picture of the future, while logic is required for how that vision can be achieved.²²² It is then the responsibility of management to create specific plans to include steps and timetables to implement the strategies. Once the plans are created they need to be ultimately converted into financial projections and goals.²²³ While creating a vision for rule of law and discerning the laws that need to be upheld and eradicated, the aforementioned formula is critical to success.

Why Women's Rights are Not Treated among the Most Fundamental of Human Rights with a Correlation to Cultural and Religious Sensitivity

Feminist: "I like the way you wear your scarf. It's creative and most unusual."

Veiled Woman: "Thank you. I get bored with the way I look if I wear it the same way everyday."

Feminist: "I thought the whole point was to wear it the same everyday so that you don't attract attention to your body."

Veiled Woman: "It's just that I think people need to look beautiful to others. That doesn't mean they have to seduce them. Allah is beautiful and He likes beauty."

Feminist: "I agree with you. I think women can look beautiful without having to appear as if they are out to seduce men. I believe that women can look both proper and beautiful. In my opinion, you can do that either wearing the veil or even western clothes. I, personally, feel more comfortable wearing the latter. The veil appears to me rather exaggerated."

²²²Kotter, 71.

²²³Ibid.

Veiled Woman: “Except that Allah commanded us to wear the veil. But I’ve always believed that the important thing is how we feel inside. The important thing is that we feel pure inside, no matter what we wear, whether it is western clothes or the veil.”²²⁴

Much has been written on the veil which is now literally and figuratively part of a heated debate in Muslim countries.²²⁵ For example the veil can seek to address sexual harassment on the street and to protect women on their way to work and to school. Its female subjects are socially conspicuous.²²⁶ But the veil as rhetoric assumes that women should be ideally inconspicuous.²²⁷ They should be locked indoors and out of men’s way so as not to seduce them and remain in their rightful place; which is the home.²²⁸ The veil is so much more than a mere fashion accessory, it is in essence a form of protection and empowerment on one hand, and yet a symbol of disempowerment and lack of

²²⁴Lama Abu-Odeh, “A Symposium on Feminist Critical Legal Studies and Postmodernism,: Part Two: The Politics of Gender Identity: Post-Colonial Feminism and the Veil: Considering the Differences,” *New England Law Review*, no. 26, (1992), 1527, 1537.

²²⁵*Ibid.* The veil means the current dress adopted by Muslim women in the Arab world, as followers of contemporary fundamentalist movements. In its most common form, the veil entails covering the woman's hair with a scarf that is ordinarily white, leaving the face exposed. All of the body is usually covered with a loose dress of dark colors with buttons from top to bottom. Women typically wear western clothes beneath this dress which they take off, along with the scarf, when they are in the sole company of women. These women do not usually cover their hands with gloves, nor do they wear makeup.

²²⁶*Ibid.*

²²⁷*Ibid.*

²²⁸*Ibid.*

equality as well.²²⁹ As difficult as it is to understand the many nuances and implications of the veil in both a literal and figurative sense, it is even more difficult to understand and place the concept of Shari'ah, or Islamic law, within stability operations and rule of law programs.

The discourse between the “veiled woman” and the “feminist” is also of critical importance as it illustrates that women are not an autonomous collective. This is also one of the many difficulties of interpreting what is or is not discriminatory as women themselves might differ on the subtle or overt impacts of law based on the lens in which they view it. All women, and men, view the world based on their own experiences of society and the world in which they live. For example, women in Iraq are not only Muslim, they also identify themselves as Christian and other religions.²³⁰ Some women in Afghanistan are members of recently formed women’s activist groups, while other women adopt a more “conservative” approach. Some Afghani and Iraqi women are single, some are married, some are widowed, some are wealthy, some are educated, and some are not educated. The differences continue, making it difficult at times to arrive at a consensus on what is or is not a discriminatory law by even a female perspective. That being said, there are some commonalities and some forms of discrimination in the law that are so blatant that they defy all societal backgrounds and preferences to arrive at a consensus or a majority view.

²²⁹Ibid.

²³⁰Peter Ford, “Iraqi Christians Wary of Islamists,” *Christian Science Monitor*, April 21, 2003, <http://www.csmonitor.com/2003/0421/p06s01-wome.html> (accessed 29 March 2009). The article reports that three percent or 650,000 Iraqis identified themselves as Christian.

As previously stated, the occupier and then the stabilizer has a duty to alter, repeal, or suspend laws of the following types:

Legislation constituting a threat to its security, such as laws relating to recruitment and the bearing of arms. Legislation dealing with political process, such as laws regarding the rights of suffrage and of assembly. Legislation the enforcement of which would be inconsistent with the duties of the occupant, such as laws establishing racial discrimination.²³¹

Laws that are discriminatory in nature can be repealed. Why then are laws impacting women's equality often not repealed? Shari'ah can be one possible explanation.

The founding jurists of Islamic jurisprudence in no way distinguish between the religious, ethical or legal aspects of their work. To Muslims, Shari'ah (which literally means the path to follow), is the "whole duty of mankind," covering moral and pastoral theology, ethics, high spiritual aspiration and detailed ritualistic and formal observance. As such, Shari'ah is the general source of ethical and religious norms as well as legal principles and rules for Muslims. Because Shari'ah does not recognize the separation of "Church" and state as is largely advocated in the West, it imposes on every aspect of a Muslims life.²³²

One of the most important of the commonly held beliefs of Islam is that there is absolutely no difference between men and women as far as their relationship with God is concerned. However, there are significant differences between men and women in a social context and as related to the family, its role and its functions.²³³ This can explain the many ratifications with reservations of Muslim nations regarding the CEDAW.

²³¹FM- 27-10, Para. 371.

²³²Khaliq, 7.

²³³Ibid.

Much has been written on the dynamic of Sharia and the CEDAW. It is a general consensus that the rights awarded to women under Shari'ah are more restrictive than those awarded under the Women's Convention.

To simply agree however that in this regard Shari'ah should not be adhered to by the Islamic states and that women living in those states should be awarded the rights stipulated in the Women's Convention would be a non-starter. Not only do Islamic states reject such a proposal as the imposition of cultural imperialism, they also point out that such a proposal is an infringement of the right of each individual to practice and follow the religion of their own choice.²³⁴

An acknowledged dilemma is that international human rights treaties cannot be expected to succeed in resolving the conflict between women's rights and religious rights as human rights treaties are often the result of political compromise.²³⁵

This dilemma is echoed by many including Theodor Meron a respected expert on international law, who has also expressed a concern that aspects of the CEDAW are incompatible with respect for principles of religious freedom in the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.²³⁶ Meron places claims based on principles of religious freedom in several areas above CEDAW principles assuming that equal rights for women were less important than freedom of religion although nothing in the two international instruments suggests that one outrank the other.²³⁷ Meron misses the most important point of all, that the views of

²³⁴Ibid.

²³⁵Ibid., 44.

²³⁶Ann Elizabeth Mayer, "Rhetorical Strategies and Official Policies on Women's Rights: The Merits and Drawbacks of the New World Hypocrisy," *Faith and Freedom: Women's Human Rights in the Muslim World*, 104, 111.

²³⁷Ibid. For example, the author indicates that Meron: Seems unsympathetic to the Article 5 provision of CEDAW requiring states to take appropriate measures to

women regarding how religion might affect their rights might be the most appropriate point of departure.²³⁸ In addition to the CEDAW, the Constitutions of Afghanistan and Iraq are the most significant legal documents that people working in rule of law programming and operations need to study and incorporate. A discussion of provisions of the constitutions of Afghanistan and Iraq that impact women follow.

The Constitution of the Islamic Republic of Afghanistan²³⁹

The creation of a new constitution was a significant feature of the post-Taliban transition roadmap that was established by a United Nations sponsored agreement known as the Bonn Agreement.²⁴⁰ The new constitution was approved at a constitutional “loya jirga” or traditional Afghan assembly in January 2004.²⁴¹ The new constitution created a strong elected presidency but also gave substantial powers to an elected parliament such

modify social and cultural patterns of conduct of men and women...he dismisses the importance of prohibiting religiously inspired discriminatory practices within the family asserting that ‘religious practices within the family which have relatively less significance for women’s ability to function as full human beings in society might be permitted even though those practices perpetuate stereotyped roles. Meron is willing to accommodate such stereotyping, asserting that: to require the elimination of sex-role stereotyping in the teaching of religious doctrine would constitute coercion to alter religious practice or belief, in violation of Art. 1 (2) of the Declaration, to the extent that such stereotyping is a genuine doctrinal feature of the religion. As the author points out, Meron does not take into account the views of women regarding how their religion should affect their rights is of the utmost importance.

²³⁸Ibid.

²³⁹The official title of the Constitution which was adopted by the Grand Council on January 4, 2004.

²⁴⁰Kenneth Katzman, Report for Congress (May 25, 2006), 1.

²⁴¹Ibid.

as veto power over cabinet selection.²⁴² The composition of the parliament has significant impact for women.

Additionally, the constitution states that “no law can be contrary to the beliefs and provisions of the sacred religion of Islam.”²⁴³ However, the constitution does not go so far as to impose Islamic law. Instead the constitution provides for court rulings “in accord with Islamic law” when there is no specific provision in the Constitution or other laws on that issue.

Finally, the constitution does guarantee “equal rights and duties” before the law in Article 22 and enumerates several areas of equal rights to include education and healthcare. The composition of parliament and specific equal rights enumerated in the Constitution of Afghanistan will be explored in greater detail below. These constitutions also directly correlate to Professor Kotter’s third stage of developing a vision and strategy. No rule of law program will have any chance of success without analyzing the constitutions in force as a rule of law vision and strategy is created.

Constitutional Parliamentary “Requirements” for Women

The parliament of Afghanistan was created to consist of a 249-seat lower house known as the *Wolesi Jirga* or House of People and a 102-seat selected upper house or *Meshrano Jirga* or House of Elders.²⁴⁴ For the elected lower house, ten seats are reserved for Afghanistan’s *Kuchis* or nomads and at least 68 of those elected or 2 seats

²⁴²Ibid.

²⁴³Ibid.

²⁴⁴Ibid.

per province for Afghanistan's 34 provinces "should" be women.²⁴⁵ This stipulation in effect gives women 25 percent of the seats.

In the upper house, 34 seats are selected by provincial councils, 34 are selected by nearly 400 district councils and the final 34 are appointed by the President. Half of the president's 34 appointees are to be women. Specifically Article 84 of the Constitution states that the President "shall" appoint 50 percent women.²⁴⁶

Treaty Obligations

Article 7 of the Afghanistan Constitution specifically states that the state "shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights."²⁴⁷ This key and relevant provision specifically states that Afghanistan will support its treaty obligations which would include the CEDAW which has been discussed previously. Therefore any rule of law program aimed at ending discrimination on women would directly support the Constitution of Afghanistan.

Right to Education

Article 43 states that "education is the right of all citizens of Afghanistan" and that it should be offered up to the "B.A. level in state institutions free of charge."²⁴⁸ Additionally, Article 44 goes on to specifically state that "the state shall devise and

²⁴⁵Ibid.

²⁴⁶Constitution of Afghanistan, section 84, http://www.supremecourt.gov.af/PDFFiles/constitution2004_english.pdf (accessed 23 March 2009).

²⁴⁷Ibid., Article 7.

²⁴⁸Ibid., Article 43.

implement effective programs to create and foster balanced education for women.”²⁴⁹

Again, rule of law programs aimed at the education of women directly support the Constitution of Afghanistan.

The Family

In perhaps the only questionable article, article 54, discusses the protection of the family as the pillar of society.²⁵⁰ Article 54 states that “the state shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of the children, as well as the elimination of related traditions contrary to the sacred religion of Islam.”²⁵¹ It is possible that this paragraph is benign, however it does lead to speculation as to what traditions are contrary to Islam. The question of wearing a veil, women sitting as judges, reproductive health decisions, and a whole host of other issues will be grappled with concerning Article 54.

The Constitution of Iraq²⁵²

We the people of Iraq who have just risen from our stumble, and who are looking with confidence to the future through a republican, federal, democratic, pluralistic

²⁴⁹Ibid.

²⁵⁰Ibid.

²⁵¹Ibid.

²⁵²The current constitution of Iraq was approved by a referendum that took place on 15 October 2005. The constitution was drafted in 2005 by members of the Iraqi Constitution Drafting Committee to replace the Law of Administration for the State of Iraq for the Transitional Period (the "TAL"). The TAL was drafted between December 2003 and March 2004 by the Iraqi Governing Council, an appointed body that was selected by the Coalition Provisional Authority after the Iraq War and occupation of Iraq by the United States and Coalition forces.

system, have resolved with the determination of our men, women, the elderly and youth, to respect the rules of law.²⁵³

Iraq's constitution was approved in a nationwide referendum on October 15, 2005. Article 14 states that "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, origin, color, religion, creed, belief or opinion, or economic and social status."²⁵⁴ While Afghanistan's constitution does not go so far as to state that Islam is the official religion of the state and fundamental source of legislation, the constitution of Iraq in Article 2 does specifically state both points.²⁵⁵ However, the Iraqi constitution, similar to Afghanistan's constitution, states that no law can be passed that contradicts the "established rulings of Islam."²⁵⁶ There is concern that this provision can deprive women of their rights as the ambiguity is a cause of concern. However there are also many specific passages of the Constitution of Iraq that proclaim specific rights for women.

The constitution rhetorically provides for gender equality and women's rights. Article 2 (Section B) states that "No law that contradicts the principles of democracy may be established."²⁵⁷ In another relevant provision in Article 2 (Section C), the constitution

²⁵³Preamble.

²⁵⁴Ibid.

²⁵⁵Ibid.

²⁵⁶Ibid.

²⁵⁷Ibid.

offers: “No law that contradicts the rights and basic freedoms stipulated in this constitution may be established.”²⁵⁸

Women’s Rights Guaranteed

The constitution of Iraq grants women the right to vote and political participation in Article 20.²⁵⁹ The constitution also grants women protection from sex trafficking in Article 29.²⁶⁰ In a rather ambiguous provision, the constitution in Article 29 guarantees “the protection of motherhood.”²⁶¹ The Constitution also guarantees “the individual and the family, especially children and women,” “social and health security and the basic requirements for leading a free and dignified life,” including “a suitable income” and “appropriate housing.”²⁶²

Women’s Rights Questioned

Despite the specific provisions in both the Constitutions of Afghanistan and Iraq that guarantee the rights of women, both constitutions do have ambiguity that cause room for concern for the rights of women. Article 2 of the Constitution of Iraq allows for Islamically mandated inequality to trump women's rights. For example, the prevailing schools of Islamic sharia, for instance, have as one of their “established provisions” the notion that daughters receive less inheritance than sons, theologically justifying such a

²⁵⁸Ibid.

²⁵⁹Isobel Coleman, “Women, Islam and the New Iraq,” *Foreign Affairs* 85, no. 1 (January/February 2006): 24.

²⁶⁰Ibid.

²⁶¹Ibid.

²⁶²Ibid.

system.²⁶³ In a logic that denies women independence and self-determination, women are “maintained” by men.²⁶⁴

In another example, Article 29 of the Constitution of Iraq stipulates, “All forms of violence and abuse in the family, school and society shall be prohibited,” but what about “established provisions” of sharia that interpret a verse of the Qur'an (Chapter 4, Verse 34) to allow men to “beat” disobedient wives?²⁶⁵

Therefore, Islamic feminists have largely abandoned attempts to replace sharia with secular law and instead are trying to promote women’s rights within an Islamic framework.²⁶⁶ Additionally many Islamic feminists focus on areas of family law as it is an area of jurisprudence that has the most impact on women’s daily lives and also leaves family law the most room for interpretation.²⁶⁷

Mosque and State

The Constitution of Iraq therefore makes Sharia law reign supreme in Iraq. Article 39 of the Constitution of Iraq deems Iraqis “free in their personal status according to their religions, sects, beliefs or choices” but leaves it up to subsequent legislation to define what that means.²⁶⁸ So can Iraqis choose among different courts and codes

²⁶³Ibid.

²⁶⁴Ibid.

²⁶⁵Ibid.

²⁶⁶Ibid.

²⁶⁷Ibid.

²⁶⁸Ibid.

depending on who would give the most favorable treatment?²⁶⁹ Is Iraq another nation that has an “elegant constitution guaranteeing many rights and freedoms to their citizens yet lack the sorts of strong institution that could defense those rights with any consistency?”²⁷⁰

The good news is that at least one constitutional expert upon analyzing Iraq’s constitution described it as having fewer loopholes for limiting basic freedoms and assigned organizations such as the Human Rights Commission and the Federal Supreme Court to defend individual rights.²⁷¹ Additionally, as with the constitution of Afghanistan, the constitution of Iraq also mandates seats for women in the parliament.²⁷² In Iraq women are guaranteed 25 percent of the seats in parliament.²⁷³ This quota was the product of intense lobbying by women’s groups who feared being left out of Iraqi politics.²⁷⁴

The aforementioned discussion can be summed up as falling into the category of creating a sense of urgency that Professor Kotter articulates in his change model. The time is now for women’s rights to take hold and there is a sense of urgency as constitutions are relatively new, rule of law programs are being formulated, and even in the U.S. women issues are taking the forefront in terms of foreign policy. Women’s

²⁶⁹Ibid.

²⁷⁰Ibid.

²⁷¹Ibid.

²⁷²Ibid.

²⁷³Ibid.

²⁷⁴Ibid.

rights as fundamental human rights do need to be tackled with a sense of urgency as the time is in fact quite right to do so.

Summary and Conclusion

The goal of rule of law operations is to essentially provide and enhance stability operations. There is nothing more central to the stability of the nation than the legal conventions such as CEDAW and the nation's constitutions that are in force. Currently the U.S. is poised to possibly ratify the CEDAW after nearly three decades of inactivity on the Senate floor. With the passage of the CEDAW, women's rights would indeed be placed in the spotlight of our foreign policy.

Also currently pending in a U.S. Senate Committee is a Senate Bill number 230, sponsored by Senator Barbara Boxer, which would require the State Department to issue a country by country analysis on women's status and women imprisoned because of their gender similar to the required reports on human rights and state sponsors of terror.²⁷⁵ This legislation would mark the first time the U.S. would be required to impose sanctions on countries for systematically violating the rights of women.²⁷⁶ Also in play is a new position, an ambassador-at-large- for women's issues at the State Department.²⁷⁷ There are only five at large ambassadors at the State Department; the others include ambassadors for war crimes, counter-terrorism, trafficking, and international religious

²⁷⁵ *MS Magazine*, 44.

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid.*

freedom.²⁷⁸ The White House issued a statement that the nomination reflects the “elevated importance of global women’s issues to the president and the entire administration.”²⁷⁹ These changes can be analyzed as a statement that women’s rights as fundamental human rights are urgently needed; reinforcing the change step of the Kotter change model.

As the U.S. policy grows and expands on women’s roles inside its own borders, the U.S. also needs to remain ever vigilant on the issues of women’s rights in nations that the U.S. is supporting through stability operations. Nations such as Afghanistan and Iraq, that are already party to the CEDAW and articulate numerous constitutional rights and freedoms for women deserve assistance with rule of law programs with a focus on women.

In the past, women’s issues have been considered controversial and untouchable for rule of law programs. However in today’s ever changing climate, women’s rights are not controversial but are simply essential to the stability of a nation. In fact, the CEDAW and the Constitutions of both Afghanistan and Iraq require certain fundamental rights and freedoms for women. Rule of law programming can thus support and promote the treaty obligations already in force as well as the Constitutions of Afghanistan and Iraq and would be wise to include these writings in the rule of law vision and strategy creation as outlined by Professor Kotter.

²⁷⁸Ibid.

²⁷⁹Ibid.

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

One of the critical tests of democracy will be whether it empowers women to enjoy the benefits of freedom and prosperity without sacrificing their religious faith. This is an issue that concerns everyone, not only women. A government that does not respect the rights of half its citizens cannot be trusted to safeguard the rights of any.²⁸⁰

Proposed Model Standard for Evaluating Laws and their Impact on Women

Any separation of women's rights from human rights perpetuates the secondary status of women.²⁸¹ Therefore, the standard that must be used to evaluate whether or not laws discriminate based on gender or impact the fundamental freedoms of women should include the view that the rights of women are human rights. The first place to begin the search for a standard with this perspective is with the United Nations Universal Declaration of Human Rights.²⁸²

The United Nations Declaration, adopted in 1948, defined human rights broadly and “symbolizes a world vision of respect for the humanity of all people. The United Nations Declaration in Article Two states that, “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

²⁸⁰Paul D. Wolfowitz, “Women in the New Iraq,” *Washington Post*, February 1, 2004.

²⁸¹Charlotte Bunch, “Transforming Human Rights from a Feminist Perspective,” *Women's Rights Human Rights* (Routledge Press, 1995).

²⁸²G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948).

property, birth or other status.”²⁸³ Additionally and most importantly, Article Five states that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁸⁴ Read from the perspective of protecting women’s rights and freedoms, many violations such as rape and abuse can be interpreted as forbidden under this Article.²⁸⁵

Therefore, a legal standard is easily found in the United Nations Declaration when combining Article’s Two and Five. At a minimum, people working in rule of law operations should ensure that existing laws guarantee that women possess fundamental freedoms. Specifically, no law should directly or inadvertently subject women to torture or cruel, inhuman, or degrading treatment or punishment. This standard will be especially useful when an occupier encounters a law that, for example, endorses honor killings or rape as a method of societal punishment, female genital mutilation, compulsory pregnancy as a societal right of passage, and women being held involuntarily for prostitution or pornography. A legal standard may be useful when those working in rule of law operations encounter laws that violate other fundamental freedoms such as the right to vote, the right to drive, or the right to an education.

Those working in rule of law operations have a particular duty to emphasize the evaluation of law that impacts, directly and indirectly, the women of the host nation. This view is clearly stated as:

²⁸³G.A. Res. 217 A (III), art. 2.

²⁸⁴Ibid., Article 5.

²⁸⁵Bunch, 13.

The lack of understanding of women's rights as human rights is reflected in the fact that few governments are committed, in domestic or foreign policy, to women's equality as a basic human right. No government determines its policies toward other countries on the basis of their treatment of women, even where aid and trade decisions are said to be based on a country's human rights record.²⁸⁶

By adopting this standard in rule of law operations, the U.S. would advance the position that women's rights are fundamental human rights. Additionally, this standard poses no conflict with the aforementioned doctrine or law and establishes a goal of protecting women from violence while securing their fundamental freedoms. This worthy goal is consistent with rule of law operations.

Recommendations for Specific Programs

The U.S. Institute of Peace (USIP) is an independent, nonpartisan institution funded by Congress.²⁸⁷ Its goals are to help prevent and resolve violent conflicts, promote post-conflict stability and development, and increase conflict management capacity and tools.²⁸⁸ The USIP established a framework for success for fragile states and societies emerging from conflict which highlights rule of law operations.²⁸⁹ The USIP framework for rule of law identifies the following objectives:

Establish coherent legitimate and just frameworks; Build effective and independent courts; Build effective police, customs, immigration and border control forces; Build effective legal profession; Protect human rights; Ensure

²⁸⁶Ibid., 12.

²⁸⁷“Strategic Framework: Fragile States and Societies Emerging from Conflict,” *Peacebuilding Tool Kit*, August 2007.

²⁸⁸Ibid.

²⁸⁹Ibid.

equal access to justice and equal application of the law; and Promote public awareness and legal empowerment.²⁹⁰

This framework is especially important to consider in all rule of law operations but specifically when planning rule of law operations with a focus on women's rights and fundamental freedoms.

Afghanistan-Specific Programs

While the 2005 Afghanistan elections resulted in 62 women being sent to Parliament, today many Afghani women remain “unaware of women's rights to political participation, to earn an income and to legally defend themselves against discrimination and domestic violence.”²⁹¹ The lack of health care is an enormous concern that faces Afghani women with one in eight women dying from pregnancy-related causes.²⁹² On average, Afghan women give birth to 7 children.²⁹³ Another significant obstacle for women is the challenges regarding educational opportunities.

Statistics reveal that 85.1 percent of Afghani women have no formal education and, of those that attend school, an estimated 74 percent of girls drop out by the fifth grade.²⁹⁴ Nearly 79 percent of women are illiterate and only 1 percent of girls in rural communities attend school.²⁹⁵ While attendance at school for girls is currently safer than

²⁹⁰Ibid.

²⁹¹[Http://www.womenforwomen.org/global-initiatives-helping-women/help-women-afghanistan.php](http://www.womenforwomen.org/global-initiatives-helping-women/help-women-afghanistan.php) (accessed 23 March 2009).

²⁹²Ibid.

²⁹³Ibid.

²⁹⁴Ibid.

²⁹⁵Ibid.

it has been in the past, it is still not completely without risk of violence including death.²⁹⁶

Since the overthrow of the Taliban, the international media has been reporting that women's issues are receiving greater significance within Afghanistan. Several women's organizations now operate openly in Afghanistan to include Women for Women Afghanistan which operates a women's shelter. The concept of shelters is still criticized by some Afghani's as a "foreign intrusion in Afghan society, where familial and community problems have traditionally been resolved through the mediation of tribal leaders and councils."²⁹⁷ The Afghanistan shelters offer places for women in abusive or forced marriages; many assist their residents with counseling, filing criminal charges, or seeking divorce.²⁹⁸

Some women's advocates in Afghanistan have gone on record as saying that since the overthrow of the Taliban, judges are ruling more equitably on behalf of women. These advocates offer praise to the national police who created a special unit to focus on family issues.²⁹⁹ However, other women's advocates in Afghanistan highlight that protections for women remain "mostly theoretical in much of the country, particularly in rural areas, where tradition runs deepest and women have limited access to advocacy services and courts."³⁰⁰

²⁹⁶Ibid.

²⁹⁷*New York Times*.

²⁹⁸Ibid.

²⁹⁹Ibid.

³⁰⁰Ibid.

Against this cultural backdrop, and incorporating Professor Kotter's change model, programs in Afghanistan, ideally, would be established with a highly-illiterate female population in mind that is generally unaware of their rights, much less how to exercise them. Rural areas, in particular, require the most attention and assisting with the delivery of legal and other services to these areas should receive special emphasis. Additionally, with the advent of women's organizations, it is critical that the U.S. military interface with these organizations and provide support with rule of law projects. The involvement of U.S. military personnel in shelters that have been secretly established by Afghani women's organizations might not be practical; however there are other ways that the military can support the fledgling women's organizations that are directly linked into rule of law programs for women. For example, military can assist women's organizations that want to rebuild or create schools for girls. Projects such as these have enjoyed tremendous success in Iraq and can be used as a model for Afghanistan.³⁰¹

Iraq-Specific Programs

While Iraq's court system needs significant reform, it does "include many qualified lawyers and judges" including a tradition of women serving as judges.³⁰²

Today, women are widely-accepted as judges in the Kurdish north and in the more

³⁰¹While deployed with 2nd BCT, the 2-8th Infantry Battalion adopted a local Iraqi girls school that was in a condemned state. Initially, the project was intended to rebuild a school in terms of literal construction. However, one of the by-products of the multiple meetings necessary to create construction plans was a career day where female U.S. Army Soldiers went to the school and presented a series of talks on careers ranging from medics to mechanics to the local Iraqi girls. The response by the students and the administration was incredibly positive and enhanced the relationship between the local population and the U.S. Army.

³⁰²Women in New Iraq, 8.

secular parts of Baghdad. Yet there are those clerics who believe the Koran prohibits women from sitting in judgment of men.³⁰³ The importance of having a range of judges on the bench to include those who are liberal and those who are conservative will determine the rights of Iraqi women over the long-term so this is an area of rule of law operations in which the U.S. military can and should engage.

Additionally, as previously mentioned, it is extremely important to include Islamic feminists in the discussion of rule of law operations. It is not only important to include feminists but also Iraqi women across the entire religious spectrum to cultivate new Iraqi female leaders with a depth of perspectives.³⁰⁴ As the new leaders are cultivated it is also of the utmost importance to provide leadership training and mentoring for the newly elected female leaders. Organizations such as the Council of Women World Leaders³⁰⁵ whose mission is to promote good governance and enhance the experience of democracy globally could be called upon by the guiding rule of law coalition to lend their expertise. The Organization aims to increasing the number, effectiveness, and visibility of women who lead at the highest levels in their countries and would be ideally suited to assist with programs such as leadership training and mentorship.³⁰⁶ The Organization has several prior and current members from Islamic

³⁰³Ibid.

³⁰⁴Ibid.

³⁰⁵The Aspen Institute, Council of Women World Leaders, Homepage, <http://www.womenworldleaders.org/> (accessed 24 March 2009).

³⁰⁶Ibid.

countries and should be considered as a possible resource for future projects with Afghani and Iraqi female leaders.

It is important for the U.S. to support a nationwide Iraqi media campaign to promote a better understanding of the Iraqi constitution so that all women (and men) know and understand their rights.³⁰⁷ This undertaking is also necessary in Afghanistan. Also, while the women of Iraq have a much higher literacy rate than the women of Afghanistan, education should still be a high priority. The U.S. military can continue to promote, via rule of law programs, female education, and specifically, expand the U.S. funded legal education program at the University of Baghdad where women comprise 40 percent of the participants in the rule of law seminars.³⁰⁸ By increasing female education and participation in rule of law seminars, Iraqi women will be trained and ready to take

³⁰⁷Ibid. Established in 1997 by Vigdís Finnbogadóttir, President of Iceland (1980-1996), and Laura Liswood, Secretary General, the Council is currently chaired by the Honorable Tarja Halonen, President of Finland (2000-present). The Council is a policy program of the Aspen Institute. The Council of Women World leaders presently has 36 members - nearly all of the current and former women heads of state and heads of government. An integral and essential part of the Council structure is the Ministerial Initiative, which engages sitting and former women ministers and cabinet members. The Ministerial Initiative began in 1998 to promote ministerial-level exchange on global issues, to identify and address the particular challenges facing women in ministerial leadership positions, and to increase their visibility both nationally and internationally. Multiple formal networks have been set up among these leaders, organized around sectors such as the Environment and Health. The Honorable Margot Wallström, the First Vice-President of the European Commission, serves as the Chair of the Ministerial Initiative. A key dimension of the Council's mission has been to build the capacity of emerging leaders. To this end, the Council has developed a program which places promising young women in the offices of Council members and other women leaders for summer fellowships. Supported by the Council's early association with Harvard, and later, Columbia University, 62 women and one man have served as fellows in 24 offices worldwide.

³⁰⁸Ibid.

an active role in rule of law operations, seek elected office, as well as other leadership roles that are vital to the future success of Iraq.

One final idea for rule of law programming is to encourage women in business and to channel reconstruction dollars in the form of microgrants for Iraqi businesswomen to provide economic empowerment.³⁰⁹ Promoting small woman-owned businesses will continue to break down gender barriers and promote fairness and equality for women in all realms of life to include the business world. This project is also applicable to Afghanistan.

Recommendations for Additional Research

The author proposes three recommendations for additional research: (1) establishing a Rule of Law Year of the Woman, (2) conducting research on how to train an illiterate population on rule of law and their legal rights, and (3) when CEDAW passes, updating U.S. Stability Operations doctrine to reflect the change in the law. Each of these recommendations will be detailed in the following paragraphs.

The U.S. Secretary of the Army has named 2009 the “Year of the NCO” in recognition of the commitment to service of, and willingness by NCOs to make sacrifices on behalf of the nation.³¹⁰ Likewise, as CEDAW is propelled forward and as the State Department Ambassador for Women begins her duties, it would be timely to coordinate rule of law programs with a focus on women. As organizations such as Women for Women Afghanistan, and Women for Women Iraq continue to generate support for

³⁰⁹Ibid.

³¹⁰The Year of the NCO, Homepage, <http://www.army.mil/yearofthenco/home.html> (accessed 23 March 2009).

women's issues, and alongside the USIP, the ABA Rule of Law initiative, and the many other organizations and agencies that focus on rule of law it is perhaps time for a specific symposium on rule of law for women.

This symposium ideally would be held in the United States with the main sponsors consisting of the Department of Defense and specifically the U.S. Army alongside the U.S. State Department with invited guests to include but not limited to: the USIP, the ABA, the Council on Women Leaders, Women for Women Afghanistan, and Women for Women Iraq. Returning to Professor Kotter's stage of creating the guiding coalition, it is time to create a truly unified and cohesive effort among governmental agencies, non-profit organizations, and rule of law project workers to make 2010 or 2011 the Rule of Law Year of the Woman declared by the U.S. President. A meeting of the guiding coalition to plan such an extraordinary undertaking would be of the utmost importance.

Another area for further research and study is using the experience of educators to create specific training plans that the U.S. military can implement to educate an illiterate population such as the population in Afghanistan. This effort would assist Afghani men and women, but as previously noted, women lag far behind in literacy rates as compared to men. This effort would also be broader than just rule of law programs, but would extend to all phases of life to include voter registration, crop rotation, and all of the basic life functions that require conveying information.

Finally, when the U.S. ultimately passes CEDAW, additional research and input will be needed on the significance of the passage of the Convention and how best to capture that information into Army Doctrine; specifically stability operations doctrine.

Once CEDAW passes, the U.S. will officially propel into foreign policy the necessity of women's rights as human rights and doctrine will need to be updated to reflect this significant change. All indications show that CEDAW will pass in the imminent future so it would be wise to begin the work necessary to include the CEDAW into the doctrine and send it through the vetting process in draft form. Once CEDAW passes, then the doctrine will be ready to be released.

Summary and Conclusion

A model for successful rule of law programs incorporating women's issues has been stated by Professor Kotter. There is a sense of urgency that women's rights are fundamental human rights. The time is now to stop honor killings, to include the voice of Islamic feminists in the discussion of governmental policies and laws, to ensure Afghani and Iraqi women are registered to vote, are permitted to vote, and can access education and healthcare. The constitutions of both of these nations require that women's rights receive attention as do the signatures of these nations on the CEDAW.

In 2009, many agencies offer significant input to worldwide rule of law programs. Up until now there has been no unified and cohesive guiding coalition made up of government actors or non-profit organizations. Great potential exists to mobilize the military to include Judge Advocates, Civil Affairs Representatives, and military commands alongside the U.S. State Department, the U.S. Department of Justice, along with the U.S. Institute for Peace, the American Bar Association, Women for Women Afghanistan, and Women for Women Iraq, to name but just a few. The potential of these organizations working in concert is unlimited.

Once these organizations unite and perhaps are focused on an international Rule of Law Year of the Woman, they can develop a vision and strategy. The vision and strategy for Afghanistan and for Iraq will each be different, but each country will need to include voices of all peoples, from the rural to the urban, from the educated to the uneducated, from liberals to conservatives. The vision and strategy already has roots in the CEDAW and the constitutions of both nations and would in many ways write itself.

In Afghanistan, due to staggering illiteracy rates, challenges exist to communicating the changes being promulgated by rule of law initiatives; these challenges can be overcome, however, as ways to educate a mostly illiterate population are explored. In Iraq there are many means to communicate the challenge that can be accessed to include the current and on-going relationship that Public Affairs officers enjoy with Iraqi media. Down to the Brigade level, mentoring relationships are developed so that public affairs officers provide training to local journalists on the technical and stylistic aspects of reporting the news so the Iraqi media have the tools to spin their own local news as they see fit.

Rule of law programs in Afghanistan and Iraq have unlimited potential to empower broad-based action as projects are generated to ensure that women's rights are treated as fundamental and that, at a minimum, women in both nations enjoy their constitutional rights and benefits of their nations' treaty and convention commitments. Rule of law programs, then, will have the ability to generate short-term wins as projects are developed across all segments of society. These short-term wins will include the rural and the urban as well as the educated and uneducated. Once these short-term gains are achieved, they can be consolidated and produce even greater change. Sharia law in

general has tremendous potential to co-exist in the modern world and at the same time not support or condone human rights violations.

Finally, and perhaps most importantly, rule of law projects in conjunction with the active support of CEDAW by signatory nations and the support of all constitutional provisions are truly forces that can anchor new approaches in the culture. When the rule of law is ultimately achieved in Afghanistan and Iraq, new approaches will be anchored in the culture with the end state of women's rights viewed as fundamental human rights, while still respecting as much as possible the culture, tradition, and religion of the respective nations. The U.S. military has the tremendous opportunity to be among the leaders of this rule of law seeking coalition by establishing rule of law programs to include everything from courthouse renovation like the courthouse in Iskandariah, Iraq to the eradication of secret Sharia courts that condone honor killing. The time is now for the U.S. military to engage the Kotter model for change and apply it to rule of law operations in Afghanistan and Iraq on behalf of women.

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